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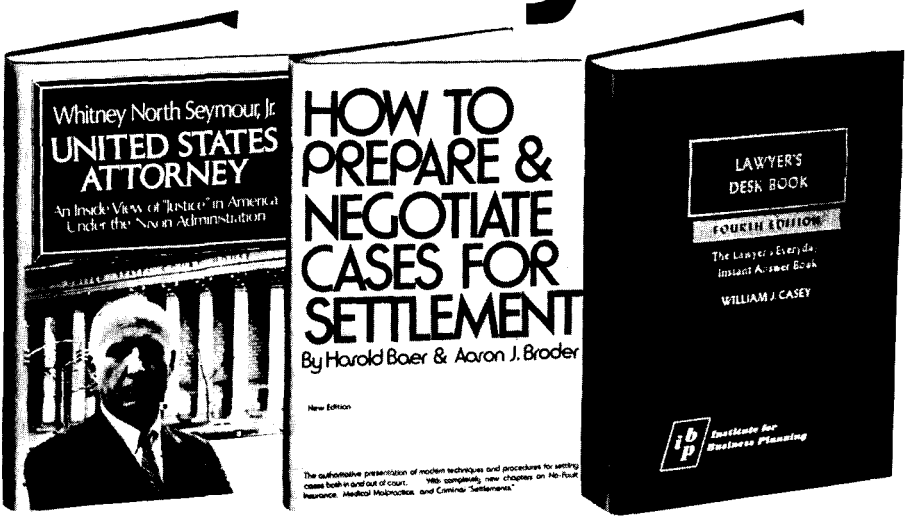

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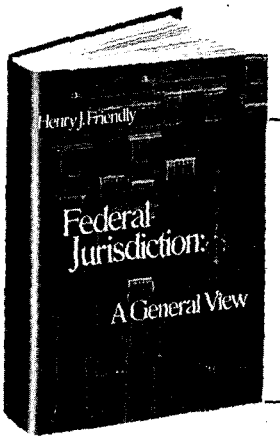

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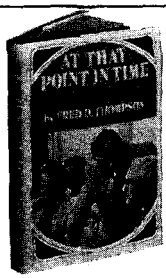

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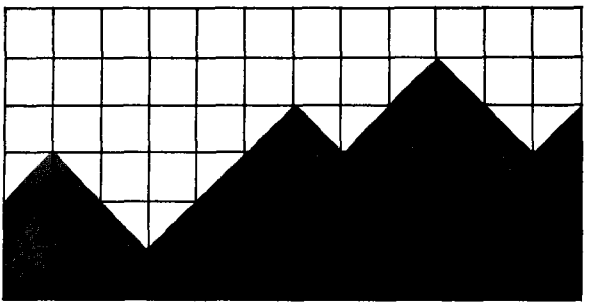

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Criminals Belong in Jail

by Tom Bethell

"Can I offer you a ride home?" my host asked at the end of the evening, shortly after I had arrived in Washington, D. C. from New Orleans. I thought about it briefly and declined. It was a pleasant evening and I felt like walking. I knew about the D. C. crime problem, of course, the problem that besets not only the nation's capital but all other large American cities, but this was, after all, one of the safest areas of Washington—just off Embassy Row. Besides, wasn't the crime problem here gradually improving? The money that had been spent, the programs that had been forged, the good intentions that had been lavished upon the problem of crime—hadn't they begun to take effect finally? Weren't we "turning the corner," especially in Washington, D. C., the home of good intentions? I strode off confidently into the night.

I might have been less confident had I been reading *The Washington Post* or *Star* in recent months. Crime was going up, up, up, I would have read. Up 15 per cent in D. C. last year, up 17 per cent in the nation, according to FBI statistics. "Crime is increasing at a record rate," according to *The Washington Post*. About 5,000 serious crimes a month are reported in D. C. There are 8,000 robberies, 40,000 burglaries per annum in the capital city. Washington is second only to Cleveland in homicides, second only to Boston in robberies. Heroin purity is up, too—from two per cent in 1973 to five per cent today. That would mean more addicts, more robberies.

There are 4,586 police officers in the District of Columbia, costing each resident an average of $124 per year—double the national average. But crime was increasing at about the same rate as in the rest of the nation. The number of police seemed to be making no difference to the crime problem, nor did the amount of money spent. In fact, a cynic could point out that the more money was spent on crime, the more crimes were committed. Young people were the worst offenders, with more than four-fifths of all serious crime being committed by those under 30.

Since 1966, the FBI's Index of Crimes (i. e. serious crimes) had increased 82 per cent, while the amount of money spent on trying to combat crime had more than doubled. In 1974, this sum, at the federal,

Tom Bethell is an editor of The Washington Monthly.

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state, and local levels, had reached $14 billion a year. The Law Enforcement Assistance Administration had spent $4 billion, and in doing so it had searched for ever more "innovative" solutions. But with each innovation, it seemed, there were ten more rapes, a dozen more armed robberies, several more murders, and a rash of muggings. Auto thefts alone were down, and that was because manufacturers had figured out how to make the new models practically burglar-proof.

Here's another item from *The Washington Post* I missed before setting off on my evening walk: "Recently revised park police statistics show intense criminal activity on the Monument grounds during the afternoon hours of Human Kindness Day. . . . Park Police reported 468 robberies alone on May 10 on the Washington Monument grounds—more than half the total of 733 robberies reported by D. C. police throughout the rest of the city for the entire month."

A couple of months after that Lawrence Meyer noted in the *Post* that "in contrast to the optimism of the 1960s that crime and other social problems could be brought under control, a consensus is developing among those who study crime that the little that can be done will have only a marginal effect. . . . In some circles, a mood of outright pessimism has taken hold."

Gallup polls have shown that one household in four was hit by crime in the past year, one American in two is afraid to walk in his neighborhood at night. But I was cheerfully ignorant of these figures as I walked along, until. . . hello, what's this . . . I'm walking close to the P Street Bridge and there's been an accident, apparently, the circling red light of an ambulance, police cars, a sheet on the road. . . .

It was a murder, not an accident, committed perhaps only minutes before I arrived. I read about it two days later in the *Post*:

"A minister's son, who came to Washington in July after his college graduation to work as a draftsman for Amtrak, was fatally stabbed Friday night, D. C. police said, as he walked along P Street N. W. near the bridge across Rock Creek Park.

"Duncan McCrea, 21, died shortly after 11 p. m. of a single stab wound in the chest, according to the D. C. medical examiner's office. Amtrak officials said they believed McCrea was on his way home when the apparently random killing occurred."

A man named Aubrey Dockery was soon arrested and charged with murder. He was arraigned the next day before D. C. Superior Court Judge Theodore Newman, Jr., and assistant U. S. Attorney John Gizzerelli asked the judge to hold Dockery on a $10,000 bond. But Newman released the man on his own recognizance—that is to say, set him free, without requiring him to pay any bail—until his trial date.

'I Knew They Were Going to Fire'

When a criminal suspect is arrested in Washington, D. C., one of several courses of action may be followed: the accused may be released on his personal recognizance (this is by far the most common outcome), or the judge may require him to post bond, which can be of two types—cash or surety. With a cash bond, the suspect can put up the money himself. (Under certain circumstances, he may even be able to pay his bond with the money he has stolen from a robbery victim.) With a surety bond, a bonding company must agree to pay the bond. (As an indication of the relative affluence of many criminal suspects, this is regarded as being a much stricter parole condition.) Another—and very lenient—possibility is third-party custody; organizations such as Bonabond, founded by ex-convicts in 1966, may agree to accept custody of defendants awaiting trial. (But a recent study has shown that over a third of Bonabond's clients either fail to appear for trial or are rearrested for

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another crime before they appear in court.) Finally, in very rare cases, the defendant can be detained in jail until trial. Of course, if he fails to pay the cash or surety bond, he also goes to jail until trial.

A few days later I read a *Washington Post* editorial on the P Street Bridge incident. The newspaper discerned a "deeply troubling question" as a result of this murder and the subsequent pretrial release of the suspect, wherein both the judge and the prosecutor had been "following the law, literally and explicitly." The "deeply troubling question" was: "Does this procedure adequately protect the community?"

The answer, I should have thought, was so obvious that the question would give me no trouble at all. I began to feel that I had accidentally fallen into a topsy-turvy world, like Alice in Wonderland.

"The desirability of jailing murder suspects is not so obvious as it might look at first glance," the *Post* cautioned. "The suspect in the P Street case is far from the only person to be freed here in recent years while facing a trial that could end in a life sentence. The practice is, in fact, not uncommon. Experience has shown murder suspects to be well behaved while awaiting trial, particularly in comparison with suspects in certain other types of cases—for example armed robbery. It needs to be repeated that the suspect is presumed innocent until convicted, and being in jail makes it much more difficult for him to present an effective defense at his trial."

The information about "well behaved" murder suspects is highly misleading, however, because about half of all the murder cases the courts deal with involve a marital or domestic flare-up, a "crime of passion" (often helped along by a readily available handgun), in which it is generally safe to assume that the attacker does not have a criminal disposition, is immediately docile

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following his or her assault, and can be relied upon not to repeat it.

Also, the suggestion that defendants in jail find it difficult to present an effective defense is not plausible. Defendants don't "present" a defense at trial (or don't have to, at any rate), their lawyers do, and defense lawyers are entitled to interview their clients in prison.

But the most interesting revelation in the editorial was that the judge had, in fact, followed the letter of the law, which was itself complicated by the following turn of events: Originally, judges had the power to hold defendants in jail for trial in capital cases. But in 1972 the U. S. Supreme Court "effectively abolished capital punishment in the District of Columbia." Capital cases no longer exist. As a result, the *Post* editorial continued, "the most violent and wanton crimes are now handled under the extremely rigorous and restrictive standards that—altogether properly—were originally written for the less serious cases. These standards limit pretrial detention to those cases in which the suspect is a drug addict or had a prior record of violent crime."

With capital cases no longer in existence, then, the *Post* recommended that Congress "remedy this anomaly by reinstating the discretion [to] judges in cases involving the most serious crimes of violence." If this remedial step is taken, the *Post* said, "the public's right to reassurance will not necessarily outweigh the suspect's right to freedom before trial."

Why is it, I asked myself, that the rights of criminal suspects must *balance* the rights of those not suspected of crimes? Why shouldn't the latter *outweigh* the former?

About a month later I read another and in some ways more remarkable story by Ron Shaffer in the *Post* about a different case. A girl named Sally Ann Morris had been shot in Georgetown. The story went on:

"It was about 10:30 p. m., she recalled. She and her boyfriend, Henry Miller, were walking down 33rd

Street, heading for an M Street restaurant. . . when two men approached. As they passed the couple, one of the men pulled out a gun, cocked it and stuck it in Sally Morris' back. 'I knew right away they were going to fire it because you just don't cock a gun without a reason,' Morris said.

"Instinctively, Miller grabbed her and they started to run. After a few steps, she said, she heard gunfire and felt a slap at her back. 'It felt like a burning needle that went through me real quick. It sort of numbed me.' . . . The bullet ripped through her intestinal tract and lodged in her lower abdomen. . . . Doctors had to perform a colostomy, rerouting the undamaged intestinal tract to a substitute opening in her lower abdomen. This type of operation allows body waste to be passed into a disposable plastic bag attached to the new opening."

And there was this: "Police said the two men had been committing armed robberies in Georgetown for several weeks before the Morris shooting, escaping by hiding in the back seat of a getaway car driven by the women."

And this unbelievable paragraph: "Compounding all this is the fear that the ordeal is not yet over and that her assailants may return to kill her. Four

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suspects arrested in the case, who were released on personal recognizance, pending trial, promptly disappeared and are at large today."

What was going on here? A *Washington Post* editorial soon followed, making three recommendations: "First of all, the District of Columbia needs legislation to compensate the victims. . . ."

First of all? This ordering of priorities disturbed me, with its implication that if only the victims of crime can be "paid off," then society and its criminals will once again be in a state of balance; and with its familiar suggestion that money can solve all problems, including criminal assault. Would money repair Sally Morris' intestinal tract? What about the suspects having been released? Did not that raise a more urgent issue?

In fact, this turned out to be the *Post*'s second recommendation. "The time has come for Congress to hold oversight hearings on the Bail Reform Act and the way in which it is working in practice," the editorial continued. "Experience under it is beginning to raise questions as to whether the rights of the public are being adequately protected."

'Mere Community Safety'

I decided to visit the D. C. Superior Court where, I hoped, I would be able to find out more about the Sally Ann Morris case, and the Bail Reform Act itself. The District of Columbia is a federal jurisdiction, and so it is important to bear in mind, in trying to understand D. C. crime, that what would be a state crime anywhere else becomes subject to federal court procedures in Washington. The prosecutors for local or "street" crime, as well as federal crime, are U. S. attorneys. Thus the Bail Reform Act of 1965, which applied to federal jurisdictions, applies to *all* crime in Washington.

I spoke first to assistant U. S. Attorney Judith Hetherton, who handled the Sally Ann Morris case in Arraignment Court. Here the presiding judge (they work in this court for a month on a rotating schedule) makes the decision as to whether the defendant shall be released on recognizance, or released on a money bond, or detained in jail while awaiting trial.

"I remember the case," said Judith Hetherton. "A girl was quite seriously injured. I argued for a money bond, but the judge didn't grant it. I take it that the suspects didn't show for a preliminary hearing?"

"Right."

"They were arrested on two separate charges that evening," she went on. "We took our strongest case and held them on that charge. The judge knew that they were suspects in the other case, but he has to consider their record of convictions, their ties to the community, their employment record, and so on, in determining their bond. You should talk to Lee Cross. She might be able to tell you more about the case, and about the Bail Reform Act."

Assistant U. S. Attorney Lee Cross, the deputy chief of the Grand Jury section, has worked in the U. S. Attorney's office for four-and-a-half years. The part of the Grand Jury section I saw had rooms where policemen were sitting playing cards, waiting to testify; other rooms with rows of seats bolted together, where waiting witnesses sometimes lay horizontally, giving the impression of a railway station at 2 a. m.; defense attorneys who occasionally strolled from room to room (generally they wore three-piece suits of an elegant cut); and prosecutors with piles of documents under their arms (generally they looked harassed).

Lee Cross sat behind her desk, which was laden with files. She had time to talk, as it turned out, because she was waiting for her 7 p. m. appointment.

"I don't know the details of the case," she said when I mentioned Sally Ann Morris. "But you could look up the 'jacket' in the Bench Warrant section. It's a public docu-

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ment. A warrant will have been issued for the arrest of the defendants. As for the Bail Reform Act, the D. C. Code, Section 1321, discusses release prior to trial. It goes through the conditions of release to ensure appearance at trial, such as third-party custody by parents or an organization, or placing restrictions on travel, or requiring an appearance bond or a surety bond. But here's the main point. The judge may not set financial conditions on release merely to ensure the safety of the community. He may only do that if the prosecutor shows likelihood of flight by the accused."

"Merely" to ensure the safety of the community? Could that be right?

"Here's the wording," Lee Cross said, showing me the D. C. Code. "*No financial condition may be imposed to assure the safety of any other person or the community.*"

That seemed odd, I thought.

"To hold them, you have to use preventive detention," Lee Cross went on, " and you will recall the screaming that went on among liberals when that was passed by Congress."

I hadn't realized that "preventive detention" meant holding suspects charged with such crimes as murder and rape prior to trial. I had been under the impression that it was some sort of repressive scheme to lock up radicals—devised by President Nixon, no doubt.

"But preventive detention is so hard to apply it's not used very often," Lee Cross continued. "The government has to reveal practically its whole case to show probable cause to the judge; the defendant has to be brought to trial within 60 days, he has to have been convicted of a violent crime within the past ten years; and the government has to show that no other condition will reasonably assure the safety of the community." According to one figure I had read, preventive detention has been applied only 50 times since it went into effect in 1971.

"How often do defendants released without bail not show up for trial?" I asked Lee Cross.

"It's disturbingly frequent," she said. "To get the exact figures you should talk to Peter Chapin, who is in charge of the Felony Bench Warrant section, and John Hume, chief of the Felony Trial section. If you had more intelligent criminals, a lot fewer would show up, I can tell you that. Fortunately for us, most of them aren't too bright. It isn't easy to track these people. Under the provisions of the Social Security Act, they can go and get a job as a plumber, say, in Seattle, Washington, use their social security numbers, and Social Security won't give that information to the FBI, even though they're wanted for armed robbery."

That seemed odd, too.

'Your First Robbery Is Free'

"Often the defendant is back on the street before the victim leaves the hospital," Cross said. "A defense attorney just told me that two clients told him: 'Your first robbery is free.' Routinely they get probation for armed robbery. God only knows why." She lit a cigarette and considered the question before continuing: "So many judges look at it from a middle-class perspective. For a professional person a felony conviction is a serious matter: it's on his record, he loses the right to vote, loses the right to get certain government jobs, various trades won't take convicted felons, you can't practice law, and so on. But for most of the people we get, these considerations don't bother them at all. The *only* thing they worry about is getting time. The rest they couldn't care less about. I had a defense attorney tell me about a case the other day, a client who pleaded guilty to forgery in return for a likely probation sentence. 'I tried to tell the girl what she did was wrong,' the lawyer told me, 'but she thinks I'm crazy. She got 1,500 bucks out of it passing bad checks, and she isn't going to jail. That's all she cares about.' She beat the system, in other words."

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Lee Cross ran a finger through her hair and absently glanced at a strand for a second. "I'm convinced that the big unanswered question in all this is witness intimidation," she said. "We have two or three good cases a day dismissed because we can't get the witnesses to come down here. In some cases it's overt intimidation—a phone call from the defendant—but more often just a feeling because they saw the guy back on the street. The Sally Ann Morris case you are referring to—we have much worse ones than that, where the witness and suspect live together on the same block and know one another.

"In such cases as these, the concept of 'innocent until proven guilty' is a pure legal abstraction, you have to remember. You can't expect the victim to believe it when he knows the person who robbed him. Or take the case of the person who is arrested right at the scene of the crime. Again, you can't expect the victim to believe his attacker is innocent until he's been brought to trial."

According to one study, as many as 1,000 cases in D. C. are dropped each year because of witness intimidation. "And here are some statistics we don't have," said Cross. "How many people are deterred from reporting crime because of probation and bail? How many people go to police line-ups and don't identify the person because they know he's already made bail? Many of them refuse to come down here to the Grand Jury and testify. Sometimes they disappear completely. The police can't find them. Or they come down here and say things that just aren't so, like, 'I saw him standing by the truck, but I didn't see him getting out of the truck.' Or they'll say: 'No, that isn't the guy who robbed me. That was the guy who *didn't* rob me.' Just like that, when earlier they have told us who it was. Witnesses may come down here four, five, or six times. And what do they get out of it? They'll say to me: 'But he'll be out in no time,' or 'he was already out on pretrial release.' So I have a standard little speech I give them. I say we have a very good case. If it's suddenly dropped, he'll know why. He'll know you refused to identify him. That's just like writing 'pigeon' right on your forehead. Anyone want to rob someone, come and rob me."

She lit another cigarette and went on: "The citizens don't understand, either, especially the ones who are poor but honest. I had a case once, a victim in an armed robbery. A blue-collar worker. By the time of trial he had been laid off his job. The defendant was convicted, but he had no prior convictions. Then, pending sentence, he was released by the judge on condition that he take a certain job which the judge had arranged for him. Of course, the victim would have liked a job, too. The defense attorney later told me that the kid quit the job a few days later—it was hard work. But he still got probation. So what does the victim think? He had to come down here a number of times, no job. . . ."

"You know, if a Martian were to come down here, he wouldn't believe it," Lee Cross went on. "A crime is committed, right? What happens? In some cases, the witnesses are locked up for their own protection, the alleged criminal goes free. There are now such things as 'witness protection units,' used primarily for organized crime cases, but sometimes with street crime. Then the case goes to trial, and you lock up the jury. Then he's convicted, let's say. At last he goes to prison—maybe.

"But to answer your question about the Sally Ann Morris case, if the defense lawyer can persuade the judge that there is no danger of flight, then there is no reason for not releasing the defendant on his personal recognizance. If they've lived for years in the District, the judges tend to be impressed that they have ties to the community. I've heard lawyers defending multiple offenders tell the judge with a perfectly straight face, 'Your Honor, my client has been charged 35 times, and he has shown up in court every time.' Their long

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record is used as an argument to release them.

"One more point before you go," she said. "Catch-22 for prosecutors. Say a man is convicted of armed robbery. He's a first offender, and he gets probation. Out on probation, he's arrested again for armed robbery. What happens? We keep him on five-day hold and ask the judge to revoke his probation for the first offense. But often the judge doesn't. He'll say, 'Let's see what happens in this case first.' He's not been proven guilty yet, you see. So that's what they mean when they say the first robbery is free.

"Meanwhile the judge in the new case will release him again, so that he may be on the streets for seven or eight months pending trial, because to set a bond you have to show likelihood of flight, not danger to the community.

"Now you should talk to John Hume. I'll tell you a story about him. He was trying a first-degree murder case also involving a rape. Bond was $10,000, but the defendant had made bond. In most cases you only have to put up one tenth of the amount, so the figure is meaningless, but it makes the judges look good because it seems as though they are setting high bonds. The day before the trial Hume's wife had to leave, so they had a baby-sitter come over. Her boyfriend came to see her during his lunch hour, and he brought a friend with him. The friend turned out to be the man charged with murder. While he was in the house, he looked around and saw that he was in the house of the man who would be trying him the next day, in the house with his one-year-old son. The suspect was convicted a few days later. He was a refrigerator repairman, who had gone into a woman's house and had found her there alone. He raped and murdered her. He later gave a detailed confession."

Before seeing Hume the next day, I went to the Bench Warrant section and requested to see the "jacket" on cases 48406 and 48407, for James A. Weeks and Roy Wade Weeks, the male suspects in the Sally Ann Morris case. Roy Weeks was listed as living on 10th Street, N. W., and as having resided there for "three months, with girl friend." James Weeks had been living on A Street, S. E., "for one month." Eunice Walker, an alleged accomplice, was listed as living on A Street, S. E., for "three weeks." How could such brief residences be construed as evidence of "ties to the community," I wondered. And who was the unnamed "girl friend"? I recalled Lee Cross' response on this point: "What kills me," she said, "is when the person listed as 'friend' is the co-defendant in the crime." Police have been searching for Roy and James Weeks, as well as Eunice Walker and Terry Ann Stewart, since July 11.

I spoke to John Hume next, on the third floor of the Pension Building. For the past six months Hume has been head of the Felony Trial section in the U. S. Attorney's office.

"Of the felony cases that we have indicted," he said, "we have 500 fugitives right now. That is 25 per cent of the cases. There is a variety of reasons. The defendants don't get proper notice, or they say they never received it. Many of them come to arraignment, learn about the strength of the case, and don't come back. Of those arrested on felonies, I would guess that 65 to 85 per cent are back on the street before trial. When I was in Arraignment Court two years ago, we did not get money bond in as

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many as 25 per cent of the cases. When you consider that we convict 75 per cent of those indicted, and that about 75 per cent of those indicted are on the streets before trial, you've got a lot of dangerous people on the streets of D. C."

About 3,000 defendants are free on bond on any given day in D. C., about 2,250 of whom are statistically likely to be found guilty.

"With a stick-up in D. C.," Hume went on, "if the person is 18 to 22, he can commit two or three or four felonies and keep going down to Lorton for a hand-slapping under the Youth Corrections Act—six months to a year for even the most heinous crime. Then the Supreme Court finally ruled that the judge can use his discretion about applying the Youth Act in sentencing. Since then, adult sentences have been occasionally imposed on youthful offenders. But there is still a widespread tendency to sentence under the Youth Act."

'It Is the American Way'

Hume continued briefly on the subject of lenient sentencing—a defect in the present system of criminal justice as pervasive as the pretrial release of suspects who may reasonably be presumed to be dangerous. He mentioned one case which was publicized in the spring of 1975—*U. S. v. Olen Lebby*—which is a case study in lenient justice. First of all, Lebby was convicted of assault with a dangerous weapon. He was out on parole on this conviction when he was rearrested and charged, once again, with assault with a dangerous weapon. Once again he was convicted, but once again was out on parole, this time to await sentencing on the second conviction. At large again, he shot and killed a policeman. He was then picked up and sentenced on the second dangerous-weapon count, for which he got 30 to 90 months. He was then convicted of the murder charge and was sentenced to 9 to 27 years, the sentence to run concurrently with the earlier sentence. This means that he will be eligible for parole once again after nine years.

"But it is the American way," Hume concluded. "Instead of making the hard decision, we lower the standards for all. So my criticism of the system is that it tries to do too much for too many. Most of them just aren't going to be turned into law-abiding citizens, but after six months most of them are right back in the community. What you read about in the *Post* and the *Star* is just the tip of the iceberg. There's a lot of human misery all over this city, and mainly because there are people out on the street who shouldn't be."

I asked Hume to tell me how he felt about the accused murderer having come over to his house that day.

"Well, it upset me," Hume said. "I realized for the first time how the witness feels when he sees that the person who attacked him is back out on the street before the trial."

Hume then introduced me to Peter Chapin, a curly-haired man whose office was across the hall and who was in charge of the "felony fugitive program—designed to keep track of felony fugitives," he explained, adding that there was a "backlog of approximately 530 felony bench warrants ranging from unauthorized use of a vehicle up to first-degree murder." This, he said, was 25 to 30 per cent of all felony indictments.

Chapin lit a pipe and reached for a file. "Okay, some egregious cases," he said, "but bear in mind that these are not typical cases. I prepared a memo for Earl Silbert, the U. S. Attorney, in April of 1975. Here's one: *U. S. v. Raymond Boswell*. Boswell had several cases pending. Originally he was arrested for second-degree burglary. Personal recognizance was not recommended by the Bail Agency. He had several prior convictions, including rape, unauthorized use of a vehicle, rape reduced to simple assault, and an escape in 1971. The court ordered a $2,000 surety bond, which meant he had to pay $200. Okay, in July 1974 he was rearrested on first-degree

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burglary. On that date the Bail Agency indicated he had been booked under a different name for a third first-degree burglary. Since he had no previous record under the fake name, he was released on his personal recognizance in that case. The parole board meanwhile required his arrest for violations of his earlier parole. And the Bail Agency could not verify his address. But the court released the defendant on $1,000 surety, which meant he had to pay $100, and he then failed to appear for all three charges."

Chapin read out about ten such cases, and I then went down to the Bench Warrant section and requested to see the jackets on these cases. Now I was told I wasn't allowed to see them, according to chief deputy clerk Frederick Beane, because I was a reporter, not a lawyer. (This denial of access to what is supposedly a public record was later repudiated by a spokesman for Chief Judge Harold H. Greene.) But in another office I found out that Raymond Boswell had been caught, once again, and his case was now available for study in Judge Charles Halleck's chambers, where it was soon coming up for a hearing (although Halleck had not been responsible for the earlier disposition of the case).

'Too Many Cases'

I approached Judge Halleck's chambers with curiosity. There had been publicity about him in recent weeks, since a judicial review commission had held hearings to determine whether he was qualified as a judge. Finally they had agreed that he was "qualified," but not "well qualified," and President Ford had reappointed him. He now awaited Senate confirmation.

In *The Washington Post* I had read that "Halleck underwent a radical change in philosophy and lifestyle—but not his colorful courtroom manner—in the early 1970s. He divorced his first wife and married a probation worker, grew a beard and moderately long hair, and became, in the eyes of some, as pro-defendant as he once had been pro-prosecution."

Although there had been a lot of implied criticism of judges in what the prosecutors had told me, they had carefully avoided mentioning names. But it seemed clear that Halleck was someone they had in mind. One person I spoke to would say only that, from the prosecutor's point of view, the black judges tend to be better than the white ones, because they have more "street sense." About 80 per cent of the D. C. judges are white—as is Halleck.

I asked the law clerk if I could see the Boswell case. Suspicion, barely concealed hostility, was the response.

Why did I want to see it? Who did I work for? What was the article about? Why this particular case? Were all the cases I wanted to see in Halleck's court? She went to ask the judge's permission, returned, and said it was okay.

I looked through the file, but it was hard to unravel the legal jargon. Then Judge Halleck himself swept into his chambers—during a recess in a trial—and unbuttoned his long black robe.

"It's no use your looking through those cases," he told me. "All you're doing is fueling public sentiment against judges. You should be up there on the Hill talking to congressmen if you want to change the system. The problem is we have too many cases. 160 indictments in my court in eight weeks. If we could cut down on the cases and bring the remaining ones to trial within 30 to 60 days, the crimes by those on pretrial release would be cut way down. Studies have shown that. If the trial is speedy, the suspect on pretrial release is less likely to be rearrested within the first month after his initial arrest."

What about the violent offenders, I asked.

"You can't predict lethality," he said. "I'm going to co-author an article with a psychiatrist. If a psychiatrist can't tell, how can I?

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There is no way a judge can predict what a man will do. We have no psychiatric training, all it is is a guess. The problem lies here," he said, taking his glasses off and shaking them at me. "We have too many cases, and so the backlog is too great. We ought to be trying felonies. But with one third of our misdemeanor calendar we're talking about prostitution—not dangerous; or selling half-a-pint out of your back door—not dangerous; nickel bags of marijuana—not dangerous. Let's put a stop to that foolishness. Here I'm doing for society what the Baptist minister is supposed to do.

"And they keep indicting them," Halleck went on, his voice rising. "They keep flooding the court system. You know what they could do to cut down on the backlog?" he asked me suddenly. "*Shut* the courthouse doors. . . ." He made a sweeping motion with his hands. "But the Logan Circle liberals who are fixing up the old houses are upset because of the prostitutes and. . . ." An aide tugged at his sleeve, but the judge seemed not to notice.

"We can't talk here," he said, ". . . go out and have lunch and talk it over. All right. What's the public upset about? Two things. Crime in the street. And too much tax money going out. So there's a freeze on. No more judges, fewer staff people. We judges are the ones that get dumped on. I'm here till seven at night, trying to get caught up." Again an aide tugged, but again he paid no heed.

"Here, let me get you a book," he said, darting off to an inner room. He came back with two: Norval Morris and Gordon Hawkins' *The Honest Politician's Guide to Crime Control*, in which the judge had underlined a proposal to de-criminalize a number of "victimless" crimes (drunkenness, gambling, drug abuse, abortion by a qualified medical practitioner, sexual behavior between consenting adults), and *Alice In Wonderland*. He pointed out a passage he had marked in this classic, and finally, reluctantly, allowed himself to be dragged back into court, declaring as he went that 40 to 50 per cent of the arrests in the U. S. were for drunkenness.

Liberal Aspirations

I set off for the library, to find out about the circumstances surrounding the passage of the Bail Reform Act. It was debated in Congress in 1965, at a time when the aspirations of liberalism in America were perhaps at an all-time high. There were many problems in need of a solution—the poor to be treated with greater consideration, the blacks to be given equal treatment, the hungry to be fed—but no problem, surely, was so intractable that it could not be dealt with by a judicious admixture of goodwill, money, and kindly government programs. And just as the blacks had been mistreated, so had many criminals, in the view of a good number of repentant and self-accusing Americans. This was the time when it became a tiny bit fashionable (although a touch risky) for northerners from wealthy backgrounds to spend a long, hot summer in Mississippi and, by the same token, equally fashionable (although not at all risky) for liberal lawyers, often working for firms with a healthy corporate practice, to take up the cause of defendants' rights.

Abe Fortas, who was then with the Washington law firm of Arnold, Fortas and Porter, had set the pace, having championed the cause of an indigent convict in Florida named Clarence Earl Gideon, who was a harmless repeater, of the type that in England is known as an "old lag." Gideon had been convicted of burglary without benefit of defense counsel and was fighting a lonely battle, so it seemed, to have the U. S. Constitution applied fairly and equally, for the benefit of the poor as well as the rich. A perfect cause to champion! The case was influential. It was easy, from the example of *Gideon*, to form the impression that criminals in America were in many

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instances true-life versions of characters in Dickens—wonderful people, really, but sorely mistreated by society and, more often than not, sent off to prison or the workhouse for nothing more serious than stealing a loaf of bread.

And so, in the early and mid-1960s, there was a build-up of such sentiments in America, although they had appeared earlier, in the 1930s, and were familiar, of course, to readers of Dickens and Victor Hugo. In many cases, these sentiments of optimism and goodwill were tinged with guilt, because have we not all come close to committing a crime, or actually committed one, at some point? Were we not merely the lucky ones who didn't get caught? Or if caught, the ones who could afford to pay a lawyer and thus buy our way out of trouble? And so the criminal became, for many people of at least moderate means and liberal disposition, largely sentimentalized. And the rising liberal sympathy for the criminal became a tide.

Gideon's case became, in the hands of *New York Times* correspondent Anthony Lewis, not merely a fascinating legal case study but literature as well, and was praised in print by a Supreme Court Justice, Truman Capote, David Brinkley, Edward Bennett Williams, and Paul Freund of the Harvard Law School. It was but a small step from this to the Miranda and Escobedo decisions, to the Supreme Court that saw itself more and more as an institution of crusading reform, and to the Bail Reform Act of 1965.

The Bail Reform Debate

The perception of the criminal as a poor and downtrodden victim of society seemed to underlie almost every comment made during the congressional debate on bail reform, although there wasn't much debate. The bill was heralded and trumpeted by Senator Sam Ervin so successfully that there is no evidence, in the Congressional *Record*, of any demurring senator speaking up at all. Ervin sponsored the bill, Senator Roman Hruska co-sponsored it. Ervin's technique was to make oratorical statements so preeminently reasonable that no one with a speck of human decency could disagree.

"When government maintains peace and order," Ervin said in the Senate on January 22, 1965, using an argument that would be repeated perhaps a hundred times, "it must exclude irrelevant factors—such as the financial status of the accused—in determining his guilt or innocence." Grotesque tales were told of wicked bail bondsmen crossing state lines and kidnapping their fugitive charges. "The only objection to the measure came from bail bondsmen," Ervin later reminded the Senate. Extreme cases of injustice were quoted, for instance that of a man who spent 54 days in jail awaiting trial on a traffic violation for which the maximum penalty was five days. Senator Tydings said: "Such unfortunate cases mock the presumption of innocence, and threaten the democratic values which that presumption protects."

After the bill had passed the Senate, without any record of a dissenting vote, Ervin (rather late in the day, one might think) brought before his colleagues an ominous matter: "This bill does not deal at all with one serious ancillary problem studied by the subcommittee," he said, "—the concept of the 'preventive detention' of an accused person on the grounds that his liberty might endanger the public welfare because of his predisposition to commit further crimes, intimidate witnesses or destroy evidence." Ervin stressed the "serious constitutional problems," the "grave difficulties" in such a measure, and it was therefore deemed "premature at the time the bail reform bill was drafted." The problem was left for the Nixon Administration to deal with—and be blamed for.

Meanwhile *The New York Times* and many other newspapers took up the cudgels on behalf of bail reform.

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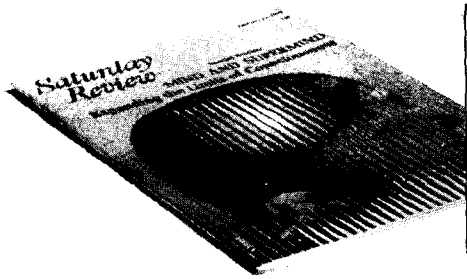

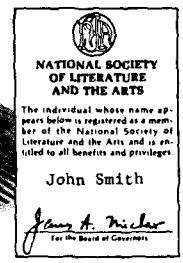

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"The bail system, as it has operated in federal and state courts for generations, is fundamentally undemocratic and unjust," said the *Times*. "Why should the man who can afford to post a bond be permitted to go free between arrest and conviction . . . while the poor man must remain in jail?"

The Manhattan Bail Project, financed by the Vera Foundation, was cited time and time again, both in Congress and out. Vera Foundation personnel had been allowed to interview arrested suspects in Manhattan over a three-year period. As a result of these interviews, a total of 3,500 suspects had been released on recognizance by judges, who in those cases were following the Vera Foundation's recommendation.

The all-important resulting statistic was that only about one per cent of those released on their own recognizance had failed to appear in court for trial, as against a normal three-percent forfeiture of bail bonds.

Herbert Sturz, the executive director of Vera, was quoted as saying: "I don't know of any serious crimes committed by people released in the bail or summons projects. There were only 30 persons rearrested of the 3,500 released on recognizance in the Manhattan Bail Project."

This bail project was undoubtedly highly influential in persuading Congress to vote for the Bail Reform Act. Yet the statistics cited by Vera Foundation personnel are grotesquely at odds with what was later found to be the case in the District of Columbia, where, according to the D. C. Bail Agency, nine per cent of the total number of suspects released on recognizance fail to appear later, and among those with felonies it is between 25 to 30 per cent; 14 per cent are rearrested and charged with other crimes.

The explanation for this discrepancy is that, in making recommendations for release, the Vera Foundation excluded first of all the most serious categories of crime from consideration: homicides, sex crimes, and drug addiction cases. In the remaining cases Vera workers interviewed suspects at length, and in some cases recommended release on recognizance. Of the cases that were then recommended for release on recognizance, a further one third were not released by the judges—undoubtedly the most serious remaining cases. The Vera report on the bail project does not specifically list what offenses its 3,500 released suspects had been charged with, but there is some doubt as to whether anything other than misdemeanor cases were involved. Misdemeanor offenders, of course, are not likely to get themselves into the more serious trouble of violating parole conditions. But now, in Washington, D. C., as a result of the Bail Reform Act—whose major statistical support was provided by the Vera study—accused murderers and rapists with a very good motive for not showing up in court are routinely released on recognizance.

"What you have to realize about Vera," said former Justice Department official Donald Santarelli, "is that they set out to prove a point even before they had any statistics, and they subsequently proved it. And then they did a very good job of selling it to their liberal friends in Congress." One person who worked on the Vera project, incidentally, was Judge Halleck's wife.

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Following its passage in the Senate, the bill was debated in the House of Representatives in 1966. Here, at last, one or two cogent objections were raised; one, for example, was by Rep. Waggonner of Louisiana, who had the foresight to ask: "Could the gentleman from New York [Emmanuel Celler] tell me what the situation would be should capital punishment be outlawed, and with what we would then be faced?" He received no substantive answer, and *The Washington Post*, of course, was asking essentially the same question nine years later.

The following colloquy suggests that the Bail Reform Act, as it has worked out in practice, at least in D. C., went way beyond the intent of Congress.

"Mr. Jonas: Is it fair to say that we are dealing here with a body of law almost outside crimes of violence?

"Mr. McCulloch: I would say that is a reasonably accurate generalization."

The bill finally passed in the House by a record lopsided vote—yeas, 319; nays, 14.

By 1970 the problem that Senator Ervin had belatedly commented on—the absence of preventive detention—was becoming painfully obvious in the District of Columbia. There was, according to a strict interpretation of the law, no way of holding dangerous suspects in many cases. So the Nixon Administration proposed the D. C. Crime Bill, with a preventive detention clause.

The cries of horror that went up from certain columnists and editorial writers now seem immoderate and, in fact, extremist in nature. Anthony Lewis, for example, who in 1964 had written the admirable study of the Gideon case, would have this to say six years later about preventive detention:

"And so the majority wearies of the effort to work out the difficult problems of race and poverty. It is tempted to take care of itself, to build a white middle-class enclave protected by police measures. That sounds fanciful, but that is precisely what the District of Columbia crime bill symbolizes to black critics: a model for state and national legislation to make the country 'safe' by putting dangerous people, mostly blacks, in jail without trial."

Another columnist who cast the issue in conveniently racial terms, thus making his plea for the defeat of the bill seem like a plea to end racial discrimination, was Tom Wicker. "What they hope to do," he wrote, "is chilling—preventive detention of those who *might* commit a crime if released or bail. . . . Preventive detention is class legislation, particularly in the District, where its burden will fall with precision on black people. As the foremost victims of a discriminatory social system the blacks provide the heft of the street criminals who are most likely to be jailed 'preventively.' "

The New York Times delivered itself of frequent editorials on the subject, the words "repression" or "repressive" occurring almost every time. Parts of these editorials today have an irony all their own: "The District of Columbia crime bill is political legislation with a vengeance. It would inspire new disrespect for the law and seriously interfere with the major function of the courts, which is the administration of justice."

(*The Washington Post*, be it said, did not join in the chorus. A year before the bill passed in Congress, Ronald Goldfarb, a frequent contributor on criminal matters to the *Post*'s editorial page, had written an article for the *Post* in which he perceived the necessity for preventive detention. Today, Goldfarb says he has almost given up trying to persuade the "civil libertarians" on this point. Although in other respects Goldfarb's liberal credentials are in perfect order, his advocacy of preventive detention is seen as a sign of incipient fascism. A major problem, as he points out, is that most people don't understand what the term means; "pretrial detention" would be an improvement.)

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By 1972, with the abolition of capital offenses, the Bail Reform Act became even more untenable. And by 1975, as James Q. Wilson and others were beginning to say, the problems of crime were looking insoluble. As for the preventive detention statute, the most frequently heard complaint about it has become that it is not used often enough.

By this time, however, a good deal of damage had been done by the "liberal" rhetoric of the previous decade. The liberal usually spoke as the reasonable man who merely opposed unfairness and inequality. As a result, whoever called for harsher treatment of violent offenders was often subtly painted as a racist; whoever called for less lenient judges was viewed as a primitive lacking in higher education; whoever demanded longer sentences was, surely, insensitive to the social roots of crime; whoever argued that prisons were primarily for punishment and only secondarily "correctional facilities," as they are often today officially dubbed, was surely an anachronism from the Stone Age; whoever urged that suspects charged with violent crimes be locked up before trial was alleged to hold the Constitution in low esteem, if indeed he had ever heard of it.

Nevertheless, from whatever vantage point you observed the spreading evil of crime ("problem" seems too mild a word), it was becoming clear by the mid-1970s that the liberal solutions of the past decade had not worked. And this was *not* just because the prisons were rotten, or because the programs weren't "innovative" enough, or because too many hookers and drunkards were being arrested, or because there weren't enough judges or clerical workers, or because not enough money was being spent. These were only practical shortcomings; the major defect was conceptual, not practical.

The problem is that built into the optimistic rhetoric of the past decade is a "liberal" view of man which seems to be unrealistic in the extreme. It is also extremely modern; certainly it is at odds with the traditional conception of man.

According to the modern view, man is an almost infinitely malleable entity, plastic in his make-up, capable of being warped, bent, distorted, but capable also of being straightened out again. According to this view, he is born naturally into a state of innocence, but made of a soft and fragile substance, so that an evil society can easily twist him away from goodness. By the same token, however, he can be restored to his original virtue by programs, re-educated by educators, corrected through the good offices of a panoply of contemporary social sciences, manipulated, if need be, by the most modern techniques.

According to the traditional view, however, man is to a very large extent "born" the way he is. He is born, moreover, in a state of sin, not primal innocence. And after a very few years the soft clay hardens, his nature is "set"; perhaps society can "bend" him, but only within narrow limits. And if he goes wrong, then there is usually little hope of redemption—at least outside a church. Redemption should be no concern of the state.

This, I feel, is the more realistic view. But even those who regard it as excessively bleak, who believe in the possibility of rehabilitation, must concede that society has not yet found the way to change a violent criminal into a peaceful citizen. At least until this discovery is made, all of us should be able to agree that the criminal justice system must be changed to make it protect society; to make what John Hume called the "hard decision"; to realize that a man who has pleaded guilty to between 500 and 1,000 rapes should not be offered a

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"deal" of total immunity from prosecution, an actual case that was recently reported in Prince George's County, Maryland; to appreciate finally that a system where such things happen has become intolerably wicked and corrupt.

As for pretrial release, the "hard decision" is, surely, quite simple: the preventive detention statute needs to be dis-encumbered; that is, made easier to apply. With one exception, the suspect charged with a crime of violence—rape, armed assault, murder—should not be released at all before trial. The exception is the crime resulting from a domestic quarrel, where the accused may be assumed not to repeat a similar act. Also, there is clearly no need to lock up the defendant charged with non-violent crimes: Oliver Twist gets paroled, to quell liberal fears on that point. Similarly, the decriminalizing reforms urged by Judge Halleck have plenty to recommend them, especially the shorter interval between arrest and trial that would result because of the smaller caseload, and the savings in police man-hours. But the armed robber does not get probation, and the man charged with armed robbery should be held "preventively."

This, in fact, would bring the American system more into line with the British system, which was on several occasions held up as a paragon during the congressional debate of the Bail Reform Act. While working on this article, I was given two comments on the British system. First by Lee Cross, who spent some time in the Old Bailey courts during a vacation in London. She was surprised to see that the judges routinely denied any form of bail to suspects who, in D. C., would routinely be released on recognizance. The second comment came from David Austern, a defense lawyer in Ronald Goldfarb's Washington law firm. Austern accompanied a British magistrate to a preventive detention hearing for a D. C. defendant charged with a violent crime. The magistrate found it hard to believe that all this complex procedure had to be gone through merely to decide whether the man should be detained before trial. "In England, we'd have just held him in jail," the magistrate remarked.

Following conviction, the violent offender should be put in prison, and, if he has a prior criminal record, kept there. And this is so *especially* if he is a "youthful offender"; not for "life," but until the burning adrenalin of youth has stopped flowing so hotly. These are the highwaymen of our time. In his *Life of Johnson*, Boswell reports dinner conversation in London about whether it is right to shoot a highwayman on sight or to hang him later. Today, a comparable conversation at a Washington dinner party would no doubt focus on his underprivileged upbringing. But the fantasy of social workers notwithstanding, a multiple armed robber is not just some put-upon victim of society, but a very likely incorrigible menace to society who should be dealt with accordingly.

Very soon we must come to our senses and realize that there is something very wrong with a society in which, in the name of the presumption of innocence, the suspect is freed and the witness must then be protected; in which the convicted robber is given a job by the judge instead of a sentence, and his victim is allowed to go jobless; in which a girl who has been shot in the back must hide from her attackers because the suspects were freed after being caught; in which convicted armed robbers immediately roam the streets after they have been sentenced; in which the concept of punishment has been almost entirely discredited; in which "your first robbery is free"; in which the rights of accused criminals are thought of as having to balance the rights of the rest of society.

If we do not, then the society which *The New York Times* feared was approaching, in which there will be a "new disrespect for the law," will very soon come to pass, if indeed it has not already arrived. ■

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Tidbits

Joseph K at the Baltimore Unemployment Office

Daniel Franko Goldman of the *Baltimore Sun* wrote about this experience with bureaucracy in *The Sun Magazine*:

"A friend of mine is a lawyer, who in recent years has been teaching law rather than practicing it. In midsummer, he lost his job in a faculty shake-up, and applied for unemployment benefits. After a time he began to receive them.

"He has always been generous with minor legal advice, and though I know that cadging professional services from friends is an imposition, I have sometimes sought his advice, and he has always been helpful.

"After he became unemployed, I asked him to look over a legal document, but considering his changed circumstances, I insisted on paying him for his services, and he reluctantly accepted $20.

"Some time passed. Then he called me, asking if I had heard from the state unemployment compensation people. It seems he had reported my $20 as earned income, as the law requires. You can clip coupons to the tune of thousands of dollars a week and still be eligible for unemployment, but if you *earn* a penny, it can affect your benefits. The same thing applies to Social Security payments. Two men can be receiving identical benefits, and one might have income from investments yielding many thousands of dollars. He still collects; but if the second man has no such investments, finds he can't make ends meet on his benefits and goes back to work, not only does he lose part or all of his benefits, but he must begin paying more Social Security taxes.

"In any event, the lawyer reported the $20 on the proper form, making it clear he'd been employed for less than one hour in the relevant week, and giving my name as his employer. He evidently neglected, however, to supply my address.

"Whatever the reason, his checks immediately stopped, and he was deluged with forms and questionnaires, all of which he duly filled out and returned, but to no avail. . . .

"Finally, he received notice that a hearing had been scheduled. He could produce witnesses or be represented by legal counsel, but the hearing could result in his being declared ineligible for benefits. He asked me to go along and explain the $20 I'd paid him as his 'employer' . . . .

"His 'hearing' had been scheduled for 8 o'clock, but one social worker had told him that everybody is told to come at 8, even if there is no prospect of getting to their cases until late in the afternoon. . . .

"The room we had been told to report to was already full, so we waited in a hallway outside. A guard came along and told us we couldn't wait in the hall, so we went into the room and stood. Another guard told us we couldn't stand, but there were no seats available. . . .

"We finally did obtain seats, but a short while later, my friend thought he heard his name called, and we got up to go to the window. It turned out to be a mistake, but our seats had been taken at once, so we stood around some more. . . .

"By this time the place was packed, and people filled the halls simply because there was no place else to go. A guard kept ordering people to 'lean against the wall,' presumably to keep the center of the hall free for walking space, but it had an unpleasant ring to it all the same. . . .

"In the hope of getting us out of there before sundown, I went up to the window and spoke to the man we'd checked in with earlier. The parade of expressions that flitted across his face in a few seconds was something to see. The moment he saw me coming, knowing I'd been there for a while and wasn't a newcomer wanting to check

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and Outrages

in, he was obviously prepared to tell me to sit down, wait my turn, and not make trouble.

"I began by saying I was not there as a claimant, but as a witness for a claimant, who had been given an appointment for a hearing, to which he could bring witnesses or legal counsel, that I had to get back to my own job, and could he please look into the matter and find out when we would be seeing a case worker.

"At the precise instant I established myself as a wage-earning, tax-paying, member-in-good-standing of the middle class, and not one of the hapless people waiting in that hot room for him to call out a name, the condescending expression that had been forming on his lips disappeared. At the words 'witness' and 'legal counsel,' something like respect actually came into his eyes, combined with a certain wariness, for those are not words normally used by people on unemployment lines.

"He did check, and we were told, almost at once, to proceed to desk number such-and-such. . . .

"While we had been waiting, I noticed I was developing a slight tremor in my hands, as though I were suffering from a severe hangover, which I was not. I was surprised to see that the same thing was true for the lawyer, an easy-going man not given to nervousness, even in uncomfortable situations. . . .

"The young woman at desk number such-and-such proved fairly reasonable. My friend told her his name, unnecessarily, since it was on all the documents she had in front of her. She did not offer to tell us hers, nor was there a name plate on her desk. . . .

"He patiently explained that he had not *found* work after losing his job, that he had been 'employed' for only 30 minutes, and had duly reported it. 'And who was the employer?' she persisted.

"At this point I spoke up and explained that I had consulted my friend one Sunday afternoon nearly two months before, regarding a business matter, had paid him $20 for his advice, and that was the long and the short of it.

"She accepted this readily enough, and after crossing to a computer terminal where she punched up some data, she returned to the desk and began filling in more computer cards.

"We asked about the system for seeing people, why the first-come-first-served rule seemed not to apply. 'Oh, it doesn't,' she said, 'not at all. You see, when you give the man your card, he sends for your records, which might have to come from a variety of different places, depending on why you've been summoned here. He calls out names in the order that people's records arrive. But in your case,' she said to my friend, 'we already had your records pulled, of course.'

" 'In other words,' he said, 'the man at the counter calls people as he receives their records, but you already had mine, so they would never have been handed to him. Does that mean we could have sat there all day and never been called?' 'It sure does,' she said. 'You could have sat in that snake pit forever' . . . .

"She shuffled some papers, took down my friend's previous employment history (which had, of course, been done before, and which was, for what it's worth, quite impressive—she even had the grace to smile when he got to the part about having taught law and government at the college level), and announced that as far as she was concerned he was back on the rolls, but it would take a week or two at least for the computer to catch up. The lawyer managed to smile weakly. 'I guess I'll just have to make that $20 stretch a little bit farther,' he said."

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Tidbits and Outrages

President Survives Shaving Accident

On Saturday, November 15, 1975, readers of *The Washington Post* were confronted with this headline:

Ford Eyes Sen. Brooke for '76 Ticket

The facts behind the story were that Ford, while visiting a black college in North Carolina, had been asked if he would consider a black running mate. What was he to say? He answered yes and named the only prominent black Republican as a possibility. Anyone who knows anything about Jerry Ford and the Republican Party knows that Senator Brooke will not be the vice-presidential nominee in 1976. What happened to the *Post* is what happens to a lot of papers covering the President: they send out their best talent, and a story has to be found and published to justify the expenditure. All the space devoted to the non-events of the China trip is a classic example. Half of the evening television news was given over to Walter Cronkite, John Chancellor, and company trying desperately in their fur-collared coats to make something out of nothing.

Another example is this story by James Deakin, an excellent reporter assigned by the *St. Louis Post Dispatch* to cover the White House:

"President Gerald R. Ford was reported today to be suffering from a cold and a sinus infection that gave him a temperature of slightly more than 100 degrees and forced him to cancel his appointments.

"Press Secretary Ronald H. Nessen said Mr. Ford was spending the day in the residential part of the White House, most of the time in bed. He said it was 'not possible to tell right now' how long it would take the President to recover.

"Nessen said in response to a question that Mr. Ford was not suffering from anything more serious than the cold and sinus infection. Except for the fever, the President's physician reported that 'all other signs are normal,' the press officer said.

"He said Mr. Ford had been suffering from the cold for about a week. The President first complained about it Oct. 9, after a press conference. He said at that time that it was the first cold he had had in two years, but later he told reporters that he had had a small cold last October."

The story appeared on page one of the *Post Dispatch*. It continued in the same vein for five more paragraphs. But you get the general idea. The President had a cold.

The Case for Limited War

We have commented at length on the excessive salaries paid many civil servants. Now comes John Finney of *The New York Times* with the news that those poor fellows are pikers compared to the military. A major general in the Army gets $54,713 a year in pay and benefits. That's $13,465 more than is received by the top civil service employees. From the rank of sergeant throught the rank of major general, army personnel receive from $3,610 to $13,465 more in overall compensation and benefits than civilian employees in comparable grades of the civil service.

And, according to Stephen J. Lynton of *The Washington Post*, our military men are taking us to the cleaners twice. Of those stationed in the Washington, D.C., area, 51.9 per cent do not file local tax returns, which of course means that the same federal taxpayers who pay their salaries have to pay the slackers' taxes as well.

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The Trashmen Loafeth

Last month, in an article called "We Could Have Saved New York," we mentioned a GAO study showing that private health insurers handled claims for about a third less than government processors. Now comes a study sponsored by the National Science Foundation showing that private firms collect garbage at a lower cost than municipal agencies. The study, as reported by the Associated Press, covered 2,060 cities. It said the governmental inefficiency was caused by "high employee absentee rates, employment of larger crews, a smaller number of households served per shift, and less labor-incentive systems."

Pals

A reporter for the *Washington Star* seeking to probe the motivation for public service of the 22,702 members of federal advisory commissions recently asked Albert V. Casey, chairman of the board of American Airlines, why Casey participated in something called Travel Program for Foreign Diplomats, which sponsors visits by foreign diplomats to the American hinterlands. He gave what has to be the most honest answer of the year: "Oh that State Department thing, it gives me a chance to sit with Bill Coleman [Secretary of Transportation] on one side and Frank Zarb [Federal Energy Administration] on the other."

The More Is Less Award

A headline in *The New York Times* of Nov. 26, 1975, has received *The Washington Monthly* Award as The 1975 Headline Most Likely to Produce Disbelief:

A Navy Staff Study Calls Big Carriers Less Costly

Why Nothing Works in New York

A glimpse at the inner workings of the bureaucracy of New York City was provided by this story from *The New York Times* about the office of the district attorney:

"The office's budget provides for a librarian; the position was approved in October 1974, and the office has been trying unsuccessfully to fill it since. When the administration of Robert M. Morgenthau took office in January, they took up the banner.

"According to Mr. Morgenthau's aides, this is what happened:

"With dust piling up on briefs and crucial court records in disarray, they first approached the Bureau of the Budget. After much paperwork they got a classification and salary rate of about $11,000 for the job. They then went to the Department of Personnel, where, by law, they were required to select a librarian from a list of applicants who had passed a Civil Service examination in the field. The Department of Personnel told them there was no current legal librarian 'list.'

"The district attorney's office then had to apply for permission to provisionally hire a librarian of its own choice (it had one waiting in the wings). After several weeks, permission was granted, the woman was told she would be hired, and then suddenly the Personnel Department said there had been a mistake; there was, indeed, a 'list' of people who had passed the Civil Service test.

"So the district attorney's people contacted all of the applicants on the list, which was two and a half years old. No one was available. Again they asked permission to hire their own person. But the Department of Personnel had discovered a second list—one that was only a year old. Again, everyone on the list had already found other jobs.

"So at last, the Department of Personnel gave them the green light to hire the librarian who had been waiting for months. Their troubles were not over, however; the Bureau of the Budget had to give *its* final approval.

"There were a number of delays, but finally the bureau gave its approval and then submitted the request to yet another agency whose blessings were required—the Vacancy Control Board.

"By the time that board considered the request, it was after July 1. The fiscal year had ended June 30. The district attorney's office was notified that it must resubmit the request with a new number—to begin the process all over again."

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Maximizing Profits at The Washington Post

by Ben H. Bagdikian

"You may feel responsible for freedom of the press, and I'm committed to that, too. But I have a responsibility that you don't. I have to worry about stock in a $193-million corporation."

That statement, made to me four years ago by Frederick Beebe, late chairman of *The Washington Post*, during the debate on whether to publish the Pentagon Papers, helps explain the management anxiety that produced the current strike at the *Post* and is transforming American journalism.

The aspect of the *Post* strike that caught most attention was the trashing of the paper's pressroom at the start of the strike on October 1. Writers spoke of modern "Luddites," workers faced with automation and striking back, like lunatics, smashing inevitable mechanical progress. But the Luddite reference means something deeper. It illuminates the bitter *Post* strike as an example of a crucial change in American newspapering: the transformation of the daily newspaper in the United States from a family enterprise to a corporation with an obligation to its stockholders to "maximize" profits.

At the beginning of the 19th century, the paternalism of English textile manufacture, something like the family control of Katharine Graham, her late husband Philip, and her father, Eugene Meyer, over their newspaper, was swept away by the forces of economic competition.

English manufacturers, 165 years ago, met competition by eliminating careful hand weaving and finishing of cloth in favor of coarser production by machines. It was cheaper to pay children to run machines than skilled adults to make quality products. Confronted with organized protest by the unemployed craftsmen, employers hardened their resolve. In 1802 the Earl Fitzwilliam, Lord-Lieutenant of Sheffield County, wrote of the organized workers:

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Katharine Graham, Washington Post *publisher.*

"They are the tyrants of the country; their power and influence has grown out of their high wages, which enable them to make deposits that puts them beyond all fear of inconvenience from misconduct. They are, however, an order of men not necessary to the manufacture, and if the merchants had firmness to do without them, their consequence would be lost. . . ."

Workers fought back with strikes, boycotts, sabotage, and riots. They called themselves "Luddites" after a legendary machine-smasher. The industrialists, moved by the prospect of higher production and profits through mechanization and the pressure of competition to reduce labor costs, countered with restrictive legislation, police action, and mass hangings. They eventually defeated the organized workers and, having failed to create a humane policy appropriate for the new mechanical age, marched forward into the Industrial Revolution.

The Washington Post is presently marching forward into a revolution of its own. Facing pressure from stock market analysts to increase profits, *Post* publisher Katharine Graham has taken a hard line on her unions, which she believes are endangering the future economic health of the *Post*. She seems to have welcomed the strike, believing that the newspaper craft unions, like Fitzwilliam's textile workers, are "an order of men not necessary to the manufacture." More important, she appears to have "the firmness to do without them."

Details of the strike are now a catechism in the newspaper business, their interpretation depending on which theologian recites them. The facts seem to be that the *Post*'s union of press operators and the company reached midnight of October 1 without agreeing on terms of a new contract. The issue was greater control by management over job assignments and hiring in the pressroom. As the strike started, someone sabotaged the *Post*

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presses, with estimates of damage ranging from $30,000 to several million. In the days that followed the initial shock at the wreckage, it emerged that the *Post* management had prepared for a strike for two years, sending 125 management people to a training center in Oklahoma to take over union jobs, and setting up alternative composing equipment in a secret project on the paper's executive floors. The *Post* clearly had prepared to operate without unions (and hinted as much during negotiations), and whoever trashed the presses clearly wished to take away this advantage.

The pressmen's only hope was to draw out all the unions at the paper, and they nearly did. All the other unions except one honored the joint picket line. The exception was the Newspaper Guild, the union for reporters, editors, and clerical workers. Despite appeals (and even some fines) from the Guild leadership, most Guild members at the *Post* crossed the picket lines and continued working. Many of the reporters argued that they were motivated by abhorence of sabotage. But the simple fact was that *Post* employees had split along class lines: white collars in the building, blue collars outside. At this writing, the strike continues. Management has taken a hard line in negotiations, and given its ability to produce a near-normal paper with 1,500 of its normal 2,673 work force on strike, seems almost certain to win its goals of cheaper production of the paper and higher profits.

Going 'Public'

Such a decisive attack on unions by the most celebrated liberal paper in America has been ironic. But the strike has little to do with ideology. It has to do with the balance sheet of a modern journalism conglomerate, which is what the *Post* has become in recent years.

The big change came in 1971, when the Post Company, of which Mrs. Graham is board chairman, issued stock and became a publicly traded corporation. The years in which it could be managed as a family business, without straining for every possible dollar of profit, were gone forever.

Even under the old paternalist regime, the company had attempted to diversify by acquiring *Newsweek* and several broadcasting stations. And its primary product, the *Post*, improved in quality and profitability.

After Philip Graham's death in 1963, his widow took over, appointing her own editor, Ben Bradlee, until then Washington bureau chief of *Newsweek*. Irritated and bored with serious ideas but quick and contemporaneous in his tastes, Bradlee turned the paper into the most interesting daily in the country. Given the paper's success during the 1960s, the expected favorable reaction of investors would provide Mrs. Graham with new capital for further expansion.

By chance, the 1971 stock issue coincided with the decision on whether to publish the Pentagon Papers. This presented management with the starkest conflict between business and editorial responsibilities. This was expressed by Fritz Beebe in the remark about his responsibility for a $193-million corporation. He went on to explain: "Our contract with the underwriters can be canceled if the corporation has a catastrophic event, and it's been determined by the courts that a criminal indictment is a catastrophic event. And if we get convicted we lose all our broadcast properties because a felon may not hold a broadcast license."

These were not idle concerns of Beebe, Graham, and their lawyers. The Nixon Administration had shown a willingness to use any weapon to hurt the *Post* and on several occasions, some open and some covert, had threatened use of the Espionage Act. To Beebe's and Graham's credit, they ran the Pentagon Papers. But corporate pressures on journalistic

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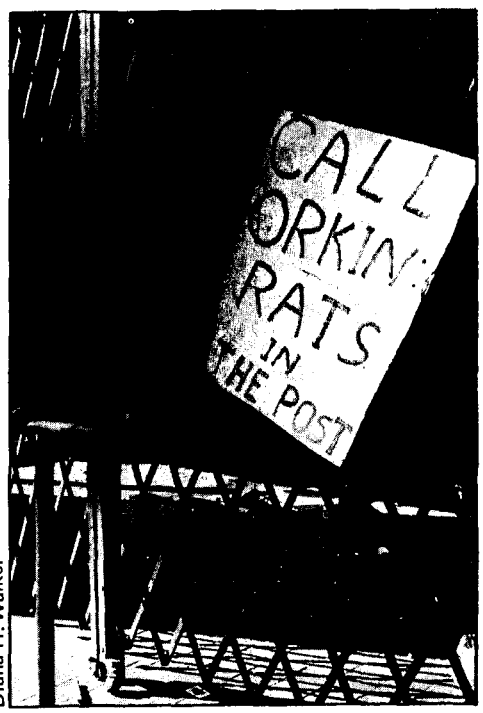
decisions had clearly escalated.

Post stock was issued at $24 a share, and to the surprise of many, it did poorly. Compared to most big-city papers, especially ones with competition, the *Post* was a lavish money-maker, returning over ten per cent on sales. (Smaller papers average something like 20 per cent, but big papers with large revenues still make abnormally high profits compared to other industries.) The poor showing of Post stock had to do with Wall Street's aversion to risk, rather than the *Post*'s politics. Wall Street operators may have disliked the *Post*'s editorials, but they do not let personal opinions interfere with profits. If the *Post* had met Wall Street's financial expectations in 1971, Post stock would have done better. Market analysts noted that the newspaper was the Post company's chief source of revenue, and that the paper itself was dependent on one city's economy. *Newsweek*, whose revenues were intended to offset any local Washington losses, was not doing well that year. The company's television stations, controlled by Nixon's Federal Communications Commission, were vulnerable to White House attack. The week some Nixon friends challenged Post television licenses, Post stock dropped 25 per cent.



Diana H. Walker

"The pressmen's only hope was to draw out all the unions, and they nearly did."

Moreover, as a national conglomerate, the Post company was smaller and less diversified than Wall Street would have liked. Investors are more attracted to companies like Times-Mirror, parent firm of the *Los Angeles Times*, which that same year had revenues of more than a half-billion dollars. Times-Mirror is a truly diversified conglomerate, which, in addition to publishing newspapers and magazines, produces Bibles, paperback books, educational aids, telephone directories, navigational instruments, road maps, engineering equipment, and computer graphics. The Post would later add the Trenton (New Jersey) *Times*, a guaranteed money-maker, to its network, but in 1971, the Post company was a minor conglomerate, with mediocre stock market performance, and its publisher was nervous.

Getting Tough

Katharine Graham told a meeting of security analysts in January 1972 that the company planned diversified acquisitions and other changes:

"... the first order of business at *The Washington Post* is to maximize the profits from our existing operations. . . . Management does not intend to overlook any reasonable means of improving profit. We are doing it both by cutting costs and by generating new sources of income. Some costs resist more stubbornly than others. The most frustrating kind are those imposed by archaic union practices that deprive the company of the savings we ought to achieve from modern technology. This is a problem we are determined to solve; we hope it can be solved in an amicable, constructive, spirit. In any event, we fully

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intend to deal with it."

In early 1972 the new maximization philosophy was apparent in the newsroom, especially in the gratuitous, tough-guy behavior of news executives. "Controlled tension" and "productivity" became ritualistic editorial incantations, based on the strange notion that insulting reporters who performed well would make them so insecure they would be moved to produce even more in order to avoid further humiliation.

Diana H. Walker

Brian Flores, leader of the Washington local of the Newspaper Guild.

Newsroom anger at the imposition of insulting treatment led to the disastrous Guild strike of 1974. The staff already was the best paid in the country, but rebellion at humiliating treatment, encouraged by Brian Flores, ambitious leader of the Guild local, moved the reporters to go on strike. The cause may have been just, but the strike was a fiasco. The craft unions were not even asked to observe a Guild picket line, because they had privately informed Guild leadership that they would refuse. The most important union, the International Typographical Union, was in the midst of negotiating a contract that would permit the *Post* to install radically new automated equipment. The ITU wanted to avoid any opportunity for management to move in the new equipment without a contract, and feared that a walkout in support of the Guild would give management that chance. Without the support of other unions, the Guild had no bargaining power. Several leading reporters on the paper, believing that Flores was leading them in a hopeless struggle, met privately with management to discuss settling on the terms management had originally offered. This was the final settlement, and in the aftermath Guild members were severely divided and doubted both their own leadership and their alliance with the craft unions. These doubts would be important the following year, when the craft unions appealed for Guild support.

While the *Post* Guild was coming apart, maximization of *Post* profits continued. The long-awaited automation contract was signed with the ITU, permitting vast labor savings in the future. *The New York Times*, which signed the same sort of contract at about the same time, reduced its composing room manning in the first year of the contract from 816 to 692 printers and expects to reduce it even further in a few years to 330 positions. Rigid union rules no longer prevented efficient operation of the *Post* composing room. The chief obstacle to cost reduction was now the press room, where union control of the assignment of personnel was leading to the payment of more overtime than management believed necessary. Management would have preferred to give the extra work not to full-time pressmen, in the form of overtime, but to substitutes, who could be paid straight time wages and get no fringe benefits. Tension over the issue increased as the pressmen's October 1 contract expiration approached.

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The Budget

If the pressmen could have looked at the *Post*'s detailed budget, they would have known that management was already reducing production costs. Even the newsroom, which one would expect to receive favored treatment at a paper like the *Post*, was losing out in the new regime. In 1971 news operations of the *Post* cost $9 million, or 10.75 per cent of the newspaper's total budget. In 1972 it dropped to 10.45 per cent, in 1973 to 10.2 per cent, and in 1974, to 9.7 per cent. Dollar amounts increased, but less than the paper's rising revenues. The paper's revenues went from $84 million in 1971 to $122 million in 1974, an increase of 47 per cent. The newsroom budget in 1974 was less than $12 million, an increase of only 30 per cent.

It is interesting to note where the 47-percent increase in *Post* revenues *did* go in the years from January 1, 1971, to January 1, 1975. Clearly it did not go to the newsroom, nor, in fact, to advertising, circulation, newsprint and ink, or production—all of which either dropped or remained unchanged in relation to revenues. Production costs, complained of so bitterly, rose slower than revenues. The most spectacular increase in *Post* spending was for "Administrative," that is executives. In that same period their portion of the *Post* budget increased 105 per cent, from $5,985,000 to $12,294,000. The ultimate in executivism had been reached: a newspaper was finally paying more for "administration" than it was for journalism.

In reply to a question by some newsroom Guild members, Mrs. Graham defended high incentive pay for top executives as "an excellent way of recognizing and rewarding good work when a person's contributions to profitability can be readily measured." If operating income is a measure of executive "contributions to profitability," then *Post* executives seem not to have deserved their productivity rewards. Despite a 47-percent increase in revenues, the executives produced only a 29-percent increase in profits, while their own income rose 105 per cent. The productivity of the pressmen, in contrast, does not look so bad. In the three years preceding the strike, they increased their work hours five per cent, far less than the eleven-per-cent increase in the paper's lineage, a measure of pressroom work done.

The growth in size, power, and remuneration of the corporate hierarchy at the *Post* after 1971 is one sign of the importance Mrs. Graham attached to the business side of her company. Her hiring of the hard-line Lawrence Wallace as her labor negotiator and her secret preparations for the October strike are two more. These developments are symptomatic of a basic change in most papers like the *Post*—the submersion of the individual newspaper in a conglomerate complex, with the resulting imperative for corporate growth and stock market performance. The idiosyncratic publishers, whose integrity led them to ignore narrow economic arguments in favor of quality, and who as a result created America's great newspapers, are disappearing. They are being replaced by profit-maximizing conglomerate owners. It is a forecast of trouble for independent journalism in the country's most important news companies.

The Fallacy of the Dying Newspaper

In the popular view, the struggle at the *Post* is based on the conventional wisdom about daily newspapers: they are dying and the cause of death is primarily rigid unions that are killing their employers with resistance to modern automation. It is not true.

The number of dailies has remained constant within one per cent since the end of World War II. Many big-city competitive dailies have collapsed, but the chief reason has been the economics of advertising, which produces 85 per cent of revenues for a

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paper like the *Post*. Advertisers want to place their message into each household as cheaply as possible. The paper that can do this is the one with the largest circulation, since large press runs give it economies of scale. So, for simple economic reasons, the ads flow to the leading paper, which then has more money to increase editorial, production, and circulation pressure on its competitors while they are suffering falling resources to fight back. That is why only 2.5 per cent of American cities with dailies have competing dailies. Monopoly will be a fact of life in daily printed journalism as long as papers depend on advertising.

The impact of unions on this process is real but grossly over-stated. Of the 1,770 dailies in the United States fewer than 25 per cent have any unions at all. The most powerful and widespread union, the ITU, is in fewer than 470 papers. Dailies with any kind of union, including weak company ones, are 402 with pressmen's unions, 173 with editorial and commercial, 145 with stereotypers, 136 with mailers, and 83 with photoengravers.

Unions have objected to new procedures that reduce jobs and pay, but the blame heaped on them is unfair. Managements too have been reluctant to innovate even where there are no unions, because of the expense of conversion. True newspaper automation, which combines the steps of production into a single, integrated process, requires sophisticated research and development. Until recently most papers were locally owned and profitable, so individual owners had little incentive to throw out their conventional, long-lasting equipment.

Now automation is being installed in modern ways, thanks to the large newspaper-owning conglomerates. They are more willing to develop integrated systems because they recognize the enormous long-run savings. Soon newspaper plants will bear little resemblance to those of the past. Reporters already "type" stories on computer consoles that produce letters on a television-style screen. When stories are satisfactory, a button is pushed and they go into the central computer brain. If the reporter wants a copy of what he's just written, he can punch another button and ask the computer for a display. Editors soon will make up pages on the same screen. An automatic process will reproduce the electronic image of the printed page, eliminating most conventional composing room work.

All this technology is currently available, and there are rumors in the *Post* newsroom that the *Post* will introduce some of it on an experimental basis in several months. The next step, due in about ten years, is the extension of this computer-driven system to the automatic etching of plates and, eventually, to printing without plates, by ink sprays of letters on moving paper. When this happens, there will be almost no manual operations in the newspaper business, except the reporter at his typing console—perhaps still pecking away with two fingers.

The Logic of Wall Street

The savings in production costs for papers that can afford to install these new techniques will accelerate the trend toward corporate giantism in American journalism. In the last 20 years independent local dailies have been bought up by chains, or groups, until today two thirds of all daily circulation is controlled by absentee corporations. In the last decade, shares in these corporations have increasingly been traded on the stock market. Fifteen such newspaper-owning companies are currently on the stock market and control a quarter of all daily circulation.

To get the flavor of Wall Street decision-making about the newspaper "product line," consider the following excerpt from a run-down of various industries in the December issue of *Money*: "After 1976, big-city newspapers will look less interesting than

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smaller chains, says Kendrick J. Noble of Paine, Webber, Jackson & Curtis. Smaller newspapers have had much more stable earnings than the big-city chains, Noble points out, because smaller dailies depend less on recession-sensitive classified ads, have few competitors and are located in growing areas instead of 'stagnant cities.' . . . Says Noble, 'They're good little growth companies.' "

Diana H. Walker

Jim Dugan, president of the Post *local of the pressmen's union (white shirt).*

As the *Money* report makes clear, investors prefer monopolies, so the hot newspaper properties are, with rare exception, stable, highly profitable, and not vulnerable to competition. Their conglomerate owners are under no pressure to reinvest profits from the local paper to improve quality because they already have a stable and profitable product. Instead, they are under pressure to siphon off local profits to the parent corporation for expansion into other product lines. The local American newspaper has become a capital generator for conglomerate growth.

The *Post* and many large American papers operate under this dynamic. So do the hundreds of papers in newspaper chains. It is a constraint on journalism that has nothing to do with journalistic need or even with newspaper profitability.

The perverse logic of conglomerate ownership is already clear in broadcast joournalism. Les Brown in *The New York Times* recently reported that the American Broadcasting Company was cutting its news documentaries by 50 per cent, not because ABC News was unprofitable—it had made unusually high profits—but because the recording and amusement park divisions of the ABC, Inc. conglomerate had poor profit years. In other words, news was cut because pop records and merry-go-rounds did poorly.

The Case for Unions

Although it sounds paradoxical, newspaper publishers need strong unions to preserve the quality of their product from tampering and to maintain their position relative to other media. Reliable newsroom quality depends primarily on one thing—spending money on high-caliber people whose work is immunized from business influence. The primitive level of reporting on American newspapers in the 19th and early 20th centuries was the result, largely, of miserable pay—attracting mostly miserable journalists. There was no professionalism to protect independent, ethical performance and no union to give security to the reporter or editor who produced news that happened to displease the boss's private interests.

Heywood Broun started the American Newspaper Guild in 1933. It was a major factor in raising the level of American journalism. Bosses had always told reporters they were too refined to belong to a union and in a line of work that should not concern itself with grubby things like money. Not until there were unions to do the bargaining did reporter and editor salaries reach levels that attracted and kept the best minds. It was a raising of

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It's January 1977...

. . . Gerald Ford has been defeated, and a Democratic President has just been sworn in. What difference will it make? Will we get a decent national health care system? Significant tax reform? Anything approaching full employment? Or will we be treated instead to a diet of Jerry Brown and Mike Dukakis aphorisms about government trying to do too much, a Democratic version of Herbert Hoover?

We could end up with that disaster unless we begin now to define the issues and the program that President will have to respond to.

That's why the Democratic Socialist Organizing Committee is holding a conference for January 31 and February 1 in Washington, D.C. We want to work out a program which moves from what is politically possible to what is socially necessary. We want to carry that program into the Democratic primaries and the Democratic convention. We want to shake up the liberals who are becoming conservatives.

January 31 - February 1 at the Mayflower Hotel, Washington, D.C.

For more information write: Democratic Socialist Organizing Committee, 853 Broadway, Room 617W, New York, New York 10003

standards essential to survival of newspapers, because the audience was becoming more sophisticated and broadcasting more competitive, but it was done against the overwhelming objection of publishers everywhere.

The strength of reporters' unions depends on unity with other newspaper workers—ad salespeople, clerks, and production and circulation staffs. Executives can always paste up wire copy or make telephone calls or clip news releases that come over the transom. When the Guild at the *Post* went on strike in 1974 it said it was "withholding excellence." The paper continued to operate and make money without "excellence." Only alliance with the rest of the newspaper labor force could provide power against conglomerate owners.

With automation, the power of craft unions is diminishing. Under the "attrition" clauses in the new ITU contracts, labor-saving machinery permits companies to reduce work forces by not replacing employees who quit, retire, or die. Eventually, the diminished membership and funds of the various craft unions will make them individually powerless. Some will disappear completely.

Reporters have a stake in this development, not out of any academic devotion to unions, but out of a practical need to protect independent journalistic performance from arbitrary budget-cutting and capricious firing. It was not just at turn-of-the-century newspapers where bosses ordered phony stories or fired reporters whose personal politics they disliked. In Greensburg, Pennsylvania, in 1973, a reporter was fired for saying in the newsroom that he was glad Spiro Agnew resigned.

Safeguarding Quality Journalism

Newspapers are entering a difficult period of transformation, when the nature of jobs, the size and composition of the work force, and the capital requirements of the industry will

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change radically. During this period, the best safeguard for quality journalism will be the integrity of management. But this is a slender reed. Developments at the *Post* suggest that even good papers, where executives are sensitive to quality, may respond not primarily to their own communities, but to the stock market analysts. The effect of this process will be to reduce all expenditures that cannot be immediately related to increased earnings, to avoid political positions that disturb the investing community, and to extract from each local paper the profits demanded by the home office for its expansion elsewhere.

There is no magic in newspaper unionism by itself. Rigid and wasteful union practices have accelerated the decline of many weak papers. The unions stick to the American labor philosophy of strict bread-and-butter and leave-product-quality-to-management. Management has done a bad job of it. And now that the most important managements are obsessed with the short-term demands of national money-markets, a systematic internal force is needed in local papers to preserve good journalism. As newspaper unions become closer to the core product of journalism—working with content rather than manual operation of machines—the odds increase for their evolving into a guardian for the profession.

To have this kind of influence, journalism unions must adapt to new technology and to the needs of their communities. They need unity so that they can meet the economic desires of their members and still have enough collective energy left to bargain for the highest viable quality in their product.

The most hopeful outcome to the labor troubles of the *Post* and the rest of the journalism business would be the development of One Big Union at each paper, minimizing the squabbles of each craft. *Post* Guild members should have learned from their abortive 1974 strike that they need craft workers. The *Post*'s craft workers are now finding out that they need the Guild for a successful strike.

Both management and labor are fighting One Big Union. Individual unions are jealous of their jurisdictions and their bureaucratic powers. Management doesn't want to be confronted with a unified adversary. But both sides are paying for their conservatism. Management gets caught in jurisdictional disputes, has to fight unions that are obsolete but refuse to die, and is whiplashed as a series of unions march in for separate negotiations. Unions give themselves a bad name by some of the jurisdictional fights and by the obvious irrationality of separate negotiations that diminish bargaining power.

Journalists have generally feared One Big Union because of the understandable concern that they will be outvoted by non-journalists, as they are in the Guild today, and that this may result in terms that are appropriate for clerical and production workers but not for the peculiar needs of reporters and editors. But industrial unions, like the United Auto Workers, represent entire industries and are able to contract separate conditions for engineers, artists, writers, and assembly-line workers.

Perhaps it would be better if newspaper workers and managers did not have to look to mass production industries for guidance. But newspapers are a business like any other, subject to the same pressures of technological change and competition. As the Luddites learned, smashing the machines is no answer. Realistically, the best that can be hoped is that the new technology will remain a servant of journalism—contributing to newspaper quality and morale rather than destroying them.

The danger is short-sighted managements that embrace conglomerate business practices uncritically, and in the process destroy the fragile balance between a newspaper's corporate and professional imperatives—an equilibrium that permits quality journalism to endure. ■

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In the Sanding Booth at Ford

by Rick King

It's a cold, windy morning in January 1974. The recession is getting worse, and manufacturing plants all over the San Francisco Bay area are laying off. A steel plant has closed. International Harvester and Raytheon have laid off a shift. But the Milpitas Ford plant is hiring a swing shift to make more Pintos and Mustangs. It is the only auto plant in the United States actively hiring.

I'm 24, unemployed, and trying to avoid going to law school. At 6:30 there are already 20 people in line. By the time the office opens at eight, the line has tripled in size. Most of the applicants are black or Chicano and half are women.

It is the same mix you see in unemployment offices. Men in platform shoes and construction boots, Coors beer tank tops and neatly ironed, flowered shirts. The only difference is that all the women wear pants, as if to point out that they are ready for manual labor. Everyone waits patiently. Already there are six applications for every place. The pay is over $5 an hour (by 1976 it will be over $6). No one talks.

At 9:00 I am sitting across from my interviewer, a black in his middle thirties. I notice his Bolt Law School ring and then look into his eyes. I promise myself I won't look down until he does. We stare at each other through the whole interview. I point out that I will do anything to get the job: stand in line again, fill out another application. He is impressed by my enthusiasm and assures me that one application is enough.

"Usually, we like people to stand outside longer," he confides, adjusting

Rick King is a California filmaker who worked at Ford for seven months in 1974.

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his tie. "If it rains and people stay in line, we think that's a good sign. Shows they really want the job." For the first and only time, I look away and then back to see if he is serious. He is.

Three months later, I take a physical and am ready to work. As I walk out of the infirmary, a hippie with long blond hair is pleading with an impatient Ford executive. "Let me take the x-ray once more, just once more."

"It's not going to do you any good. Your leg isn't going to change," the executive says flatly. The hippie is getting angry. I grab him by the arm and pull him outside. As we walk through the parking lot, he starts to calm down. I ask what happened to his leg.

"It got fucked up in Vietnam." I shrug, wave goodbye, and escape to my car.

Another 14 days and I am sitting at a seminar table with 20 other new hires. Five are women. Our group leader from Labor Relations, who looks like Rocky Marciano, is passing out forms: medical insurance, forms for Detroit and the union local. He advises that we take Blue Cross instead of Kaiser health insurance. All 20 of us dutifully follow his advice.

I look around the table. Most of the women are big, and everybody is healthy. There is none of the fat that would distinguish 20 randomly chosen Americans. I am one of the few who is not married. There is only one man over 30. He has worked previously making Mack trucks.

We watch a movie, "Don't Paint It Like Disneyland." The film consists of interviews with Ford workers at River Rouge. The message is clear: the work is hard but the pay is good. Our group leader turns off the projec-

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tor and announces that he worked on the line for ten years.

"If you don't have any guts, you'll quit the first day. I almost did. And you'll want to quit. I promise you that." I become convinced that if this behemoth almost quit, I'll never last five minutes.

"You're going to hate that job so bad during the first few weeks. You're going to hate Ford, this plant, your foreman. If you get through the first week, you have a chance."

He pauses and drops his voice. "But folks, let's face it. There's no place in the country, no place in the world, that's going to hire people like you, without any skills, and pay them over $5 an hour." I look at the man next to me, a young Chicano in an army jacket with Sanchez stenciled over the left pocket. He raises his eyes in an expression of resignation and agreement.

Carefully we put on our safety glasses, file out of the room, and walk through a door that says "Safety Equipment Required Beyond This Point." Moving from the quiet of the office, we are assaulted by a noise level like that of an airport runway. Everywhere there are cars of all different colors, lines of cars moving in different directions. Cars extend as far as can be seen.

We follow the group leader through the plant, respectful and wide-eyed as if in a cathedral for the first time. Conveyor belts hanging from the ceiling carry tires and parts. People hurry by in blue overalls or aprons. The foremen's neat shirts, ties, and slacks are a stark contrast. Everyone wears a watch.

Within the confusion I notice a few specific jobs. A young woman with a huge afro jams gas nozzles into cars as they pass by. Two men grab tires off a rack, bounce them on the floor, deftly catch them, secure them to each car, and bolt them tight.

As we walk workers stare at us and grin. Many are yelling. A man walks by with FUCK FORD written on a piece of white tape stuck to his overalls. My ears gradually adjust to the din. "Don't do it," the workers are yelling. "You'll be sorry." I grin at the people pointing at us and realize that we new hires are the only ones wearing safety glasses.

Eight hours later, I drive home despondent. My hands are bleeding and I feel like an idiot. I am supposed to be a block sander. Unfortunately, I am able to do about one fifth of the work assigned me. Lew, who is teaching me the job, assures me that it is all right. "You'll learn," he says. "Don't worry. At least you hustle. As long as you kill yourself for them, they'll keep you." I arrive home, drink two beers, eat a steak, and go to bed four hours early.

The Closer You Look. . .

Within a few weeks, everything is more familiar. I drive to work with Denny, a block sander who was hired on the same day I was. We pass by alternating orchards, factories, trailer parks, and billboards. WHAT IS A BULLFROG? asks one. The answer is Smirnoff and lime. Just before you get to the plant, the Galaxy bar is full of people trying out bullfrogs before work. Similarly, the liquor stores do a rush business on beer. Many cars pulling into the plant parking lot give off the odor of marijuana.

The executive parking lot is uniformly populated by late model Fords. The employees' lot is crowded with '56 Chevies, Toyotas, Datsuns and some exquisite, hand-painted motorcycles. People who have worked at both GM and Ford say that GM puts a little extra time into building its cars.

A huge banner over the employees' entrance proclaims, "The closer you look, the better we look."

"The closer you look the more you want to stick it up Henry Ford's ass," Denny tells me.

Before work I walk slowly toward the time clock, relishing the few moments of freedom. If there's time, I wander around the plant. Under one

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"You're going to hate that job so bad . . . . You're going to hate Ford, this plant, your foreman. But folks, let's face it. There's no place in the country that's going to hire people like you and pay them over $5 an hour."

roof, it has a floor space of 10 football fields. The roof is two stories high. In some places the assembly line goes up in the air or crisscrosses over itself. A private railroad brings in parts from the midwest and divides the plant in half. On the west side, cars are made. On the east, small pickup trucks.

A few minutes before 4:30, I clock in, drink two cartons of chocolate milk for energy, go to the bathroom (no chance again until break), hop over two lines, and walk into the booth. I work in the Paint department in an enclosed booth. The cars enter and exit through a narrow opening at either end. Our job is to sand the car smooth before it receives its final coat of colored paint.

The booth is hazy with dust from the shift before. The primer coat is lead-based and I wear a surgeon's mask that I bought in San Francisco. Ford provides masks, but they are uncomfortable. Art, who works across from me, uses the mask I give him. Denny, next to me, doesn't; it makes it too hard to breathe.

I hold a ten-pound air sander in my right hand and a handful of sandpaper in my left. My responsibility is the right-hand half of the trunk, roof, and hood. I open the passenger door and sand quickly inside with the sandpaper in my left hand. Then I sand the whole surface area with the air sander. Any large metal burrs or blobs of paint have to be removed with a scraper I carry in my apron pocket. The many paint runs, grease spots, or specks of dirt have to be ground down to bare metal and smoothed out. Also, the small grill in front of the windshield has to be sanded over three times. Since the line speed is usually between 55 and 58 cars per hour, I have to perform my job within 67 seconds.

After a few months, the work is routine. I've learned which parts of the job I can skip when I get tired. One day, however, a Frederick Taylor efficiency expert appears with a stop-

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watch and lurks behind pillars hoping we won't notice him. On the line, he is never referred to as an efficiency expert, but as "that motherfucker." Even the foreman, Stan, hates him. If the expert thinks fewer workers are needed, the responsibility for enforcing an increased workload falls on Stan.

The word is quickly spread and the whole line slows down. Jobs that a worker used to be able to finish with a few seconds to spare suddenly become unbearable. In our case the acting is to no avail. Two people are taken out of the booth and the four remaining are given extra work. In addition to my normal job, I now have to sand around the tail and headlights, and help Denny, in front of me, with the sides.

Coping

The four of us adjust. The work is always physically exhausting, like playing a game of football or soccer. But the real punishment is the inevitability of the line. I want to take a walk, go to the bathroom, have a Mr. Goodbar. It doesn't matter. There's always another car.

Someone shows me a *Newsweek* article with a picture of an autoworker playing a guitar while the line rolls by. The implication is that the work is so easy it's possible to take time off to play a little blues. I have to plan ahead to get a drink of water: five seconds to the fountain, five seconds for the drink, five seconds back into the booth.

The monotony of the line binds us together. Small gaps, usually a few car lengths, happen almost every day. We constantly peer down the line to see if any are coming. The big hope is that a gap won't appear during your break.

Occasionally, the line breaks down. This is what we all wait for. The plant is turned upside down. Foremen in ties appear from nowhere and furiously try to figure out what has happened. It is the only time they do physical work. At the same time, we stand around grinning and give specious advice. For once, Ford is paying us to do nothing.

Yet, such moments are rare. Within the booth, we rely on each other for entertainment. We yell at each other or speculate about whether we'll go home early. Ron and Denny trade statistics from the *Guinness Book of World Records*. We invent a form of basketball using a trashcan as a basket and play fast games during gaps. The other three constantly exchange cigarettes. We tell each other about our lives before we joined Ford.

Physically we are similar: small, energetic, and white. Art works on the driver side of the car. He plays three instruments and is beginning to give up his dream of supporting himself playing rock and roll. Art is my mirror image. He does my job on the other side of the car. We don't talk much, but we are always aware of each other. I know if Art is sick, feeling good, or feeling tired, even if we don't exchange more than a few sentences.

Ron works next to Art and is just married with a baby girl. He likes to smoke dope and hopes to be a janitor. "It's steady work, man. And not so hard. This is *too* hard."

Denny, my friend, is a former biker who used to ride with the Hell's Angels and has even had a walk-on in a motorcycle movie. Most recently, he supervised a crew that remodeled most of the Kentucky Fried Chicken stands in northern California. When there were no stands left, he joined Ford. He works next to me, on my right. The car comes to him first. If the body is particularly dirty, he yells in disgust and I get ready to work a little harder.

The booth is our world. Because we have to see any spots on the paint, the booth is white and brightly lit by neon lights. It is three car lengths long and 15 feet wide. The booth is enclosed to prevent the dust from escaping. There is a coating of dust on everything. The noise of the sanders makes it necessary to shout to be heard.

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While working, although we may be immersed in our own thoughts, there is always an unconscious awareness of the other three. Unused to repetitive work, I am the most absent-minded. Once, I find my foot caught on the line. The next car is proceeding normally and will run over my foot in a few seconds. I scream. Instantaneously, without need for explanation, Ron, Denny, and Art snap out of their private thoughts. They push the moving car back up the line and then free my foot. The whole incident takes five seconds.

I also have the least capacity to endure the frustration. One day, hating myself and hating Ford, I smash my $150 sander into a hunk of twisted metal. I look up at my friends. They are amazed. To steal from Ford or to sabotage a car is understandable. But to destroy a tool is simply childish.

Our reliefman, who studied four years to be a Jesuit, gives me another sander. He switches parts among a few old sanders and is able to disguise the fact that my sander was ever destroyed. What I have done is no big deal, just odd.

You Die in Little Ways

Sabotage against the cars themselves is common. As a matter of course, we used to force the trunks closed in a way that ensured the cars couldn't be painted properly. But most sabotage takes place in the Trim department, where dashboards, mirrors, inside panels, windows, and extras are installed. Because so many items are installed in this section, it is difficult to trace the saboteur. Everyday, mirrors are smashed and quarter panels are ripped. The art lies in sabotaging in a way that is not immediately discovered. As work is done further down the line, it becomes progressively more difficult to repair the original problem. Another form of sabotage is to ignore work. There is a legendary Trim worker whose job is to install six screws. He never puts in more than four.

Sometimes the results are artistic. For a week, cars would periodically come down our line with a huge, sculpted penis where the gear shift was to be installed. Workers came from all over the plant to look at these wonders. Gradually they grew larger and larger until the last was at least four feet long. Then they mysteriously ceased.

Usually the day passes with few such diversions. After conversation has lost its appeal, one slips inevitably, reluctantly, into daydreams. Ron mostly dreams about sex. Art hears music. Denny builds and rebuilds fantasy motorcycles or thinks of his ex-girlfriend and their little girl. I imagine going to South America and learning Spanish.

The fantasies on the line are replaced by dreams at night. I have few problems, but friends are haunted by nightmares of the line slowly devouring them or of falling further and further behind. One friend installs dream quarter panels into his girl friend's back. She wakes him up, but the minute he falls asleep, he starts all over again.

Faced with the daytime prospect of working on 400 cars, it's nice to have a little artificial energy. The plant seems to be fueled by "crossroads"—little white benzedrine pills with a cross imprinted on them. "Papa," who works behind a friend of mine, takes one every morning with breakfast. While I'm with another friend, he drops nine crossroads on the floor in front of a foreman. He calmly scoops the tablets up and eats them all. Half an hour later, he eats two cheeseburgers. Clearly his body is used to massive amounts of the drug.

Speed is sold openly, when it's available. Dealers walk through the plant on a half-hour break and sell 20 bags. Sections of the line buy a couple of $5 or $10 bags and split them up over a week. However, there is never enough to fill the demand.

One day the painters in the booth next to us drop acid. Luis, who has

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two kids and a condominium on time, paints sitting down, can't talk, and skips lunch. The pass rate on their paint jobs is normal.

Drugs, no matter how strong, provide no anesthesia for certain conditions. The ventilation in the paint booth never seems to work too well. The painters complain of being unable to breathe and of getting headaches. One day they carry Luis out of their booth unconscious. He has been overcome by the paint fumes.

Another time, Denny comes back from his break and announces a big gap coming up. Half an hour later, when the gap arrives, we hear there has been a walkout in the arc welding booth. "Just a little labor problem," mutters our foreman. "I don't know any more about it than you do." I start to walk over to body. "Got to keep to the area, Rick," Stan tells me. "General foreman wants it that way."

A taper comes back from break and says the welders are back at work. It was something about gloves and safety equipment, but she isn't sure. Three hours later, another rumor arrives. This time the welders have walked out of the plant. The four of us in the booth look at each other. We let two cars go by.

What was happening? Why had they walked out? If we joined them, would we be the only ones leaving the plant? "I'll do it if you do it." "I'll do it if *you* do it." Ron's wife has just had a baby. Art is getting married in a week. We start working again. You die in little ways.

Why the Welders Walked Out

The arc welders who walked out had been trained together in a federally financed manpower program in San Jose. They had been hired directly from the program. By the time they got to Ford, they already knew and trusted each other. Arc welding is one of the dirtiest, most painful jobs in the plant. The torches and general heat in Body Section combine to make the area like an oven. At the same time, the welders have to wear bulky protective clothing. Despite protective gloves, welders' arms are crisscrossed with scars from the sparks thrown up by their torches.

Their foreman, Becker, had been brought from St. Louis, where a Mercury shift had been laid off. Discipline in the St. Louis plant is reputed to be the tightest in the Ford organization. In the summer it gets so hot that workers have to tie wet towels around their heads to keep from overheating. One time, St. Louis workers stayed on the line with a foot of water on the floor. California employees shake their heads in disbelief when they hear such stories.

Becker thought his young, California workers were chicken. They kept asking for replacements of the long gloves that protected their arms. He wouldn't provide them; they're expensive and he wanted to make them last longer. The welders called their union rep. He told them things would be all right.

Becker continued to supervise their work. They asked for the gloves again. "They're coming." Everybody knows that safety equipment is kept in lockers close to the work area. Becker was playing with them. They stopped work.

Instantly, they were surrounded by UAW representatives, Labor Relations department bigwigs, and foremen. They demanded that the foreman be transferred and that they get their gloves. The gloves were produced. It was promised that the foreman would be replaced during lunch.

When the welders came back from lunch, the foreman was still there. One welder put down his tools and started walking out. Another later told me, "Hell, I didn't want to walk out right then. But shit, when he's walking out of the plant, what can you do?" They all walked out.

Ten welders and two other workers left the plant. They were all fired. The UAW assured them that the problem was being handled. But nothing happened. Some of the welders appeared

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at the plant gates and passed out leaflets asking people to come to the next union meeting. A few days later, the company rehired three of the welders who were not considered "ring leaders." Anybody passing out leaflets was, of course, a ring leader.

At the union meeting it took two of the three hours and a challenge to the chair to bring up the question of the arc welders. A member of the International happened to be at the meeting and counseled against any type of action. Someone was finally able to move that the union put out an informational leaflet about the incident. Union official after union official warned that a leaflet would upset the delicate balance of negotiations. When asked what negotiations, they replied that they could not say.

People who supported the welders were baited as college agitators (as indeed some were). When it came to a vote, all the workers from the line voted unsuccessfully for the welders. Almost all the UAW officials voted against them.

United Against Workers

Ford won the battle of attrition. Without the support of the union, unable to muster a significant following inside the plant, the welders became increasingly discouraged. Gradually, Ford hired back the welders who had lost heart, the ones who stopped passing out leaflets at the plant gates. In the end, only the two or three most militant welders kept passing out leaflets and trying to organize legal help. They were never rehired.

What makes the assembly line work efficiently is fear, not engineering. There have been no significant technological breakthroughs since Henry Ford first designed the line. The system is based on forcing men and women to produce as much per minute as possible. Once inside the factory, the fear system is immediately apparent. Every problem becomes a crisis, because it threatens to disrupt the smooth flow of the line.

Each department (Body, Paint, Trim, Chassis, and Pre-Delivery) has a quota to meet. In Paint, for example, 75 per cent of the cars are supposed to pass inspection. Because the departments are competitive, there is a reluctance to admit mistakes. When a department supervisor has a problem he can't solve, he often just hides it.

Before the cars come to us to be sanded, they are dipped in an ionized paint solution called "E" coat. This coat of paint actually penetrates the metal and prevents rust. One day we noticed there was no E coat on the cars. We called Stan and he went to talk to the department supervisor.

A few minutes later, Stan returned and told us to keep sanding. I counted at least 75 cars that passed without any E coat. The supervisor made sure they were duly inspected and passed. Once outside the paint section, the paint job would never be inspected again. Most people on the line estimated that the cars would rust out within a year. "They'll ship 'em to Boston and blame it on the rock salt," was the general prognosis.

If the department supervisor is displeased with a foreman under him, he will do anything to frighten him into performing better. Brutal tongue-lashing is common. Foremen work under the constant threat of being returned to the line (foremen cannot be fired, they have the opportunity to start over as workers). While ulcers are a common problem among foremen, heart attacks are also frequent. Many new foremen quit in disgust and go back to the line.

The ones who remain are the most brutal and competitive. Strangely enough, their drive to extract the utmost from the workers carries over to the machines, which are used until they break. Obviously, it would be cheaper to replace them as they wear out, but the mentality doesn't allow it.

If management is harsh, at least it doesn't pretend to help you. But the union does, and some of the worst

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contempt is reserved for union officials. UAW stands for United Against Workers, a friend tells me.

Typically, union officials seem more at home with Labor Relations executives than with workers. The atmosphere is one of smoke-filled back rooms and secret bargains. It is hard to find a union official in the plant. When you have a problem, you have to telephone and then wait for your representative. Sometimes he comes and sometimes he doesn't.

Of course, all locals are different. Local 560 can be characterized by my own representative, who spent ten minutes one day delineating the problems of the auto industry to me. The root of the problem, he explained, is that workers are lazy. If people would just come to work faithfully and work a little harder, we'd all be better off.

A few years ago, someone was killed in Body Section. A piece of machinery fell on him. The story is that the chairman of the Health and Safety Committee presented his regular report at the next meeting a few weeks later. He didn't mention the dead man. When asked why not, he pointed out that the man hadn't filed a grievance. Consequently, he couldn't investigate the problem.

Staying Human

From what I've said, working at Ford must seem like a circle in Hell. That's mostly the way I remember it. The work is trivial and the conditions poor. Intense discipline is combined with poor planning. The UAW, one of the most liberal unions in the country, constantly proves itself unresponsive to workers' needs. Aside from a few islolated ex-student revolutionaries, there are no political movements.

Each worker seemingly stands alone. Some want to work for a few years and then go to school. Most want to last 30 years and retire with a full pension. As Jerry, our reliefman, says, "I may have been born here, but I'm not going to die here."

But the atmosphere is not one of total defeat. Among workers there is a strong, unstated feeling of trust. It manifests itelf in little ways. On a break, a complete stranger will tell you about his deepest marital problems or his feelings of despair, simply because you too are wearing overalls. After five minutes, he'll look at his watch, wave goodbye, and rush back to the job.

Although opposition to Ford is not organized, it is constant. Militancy on an individual level is high. Overly tough foremen find their work sabotaged and are subject to continual verbal harrassment. Efficiency experts are forced to hide while doing their inspections. Workers are united in one thing—hating Ford.

Still, 30 years is a very long time. Sabotage helps relieve frustration, but without some type of political context it becomes an empty gesture. So, the worker settles into a slow, cynical wait for retirement. After all, it's a steady job.

During the wait, there remains the dignity of not joining management. There is a clear distinction between exploiter and exploited. The refusal to become one of the exploiters is the constant, steadfast expression of humanity in the face of Ford's regime.

One of my clearest memories of Ford is walking down the Chassis line one afternoon. One part of the line runs above the workers who assemble the undercarriage. All day they stand in a narrow concrete trench working on the cars passing over their heads. They have no room to move around and can't see anything.

I hear a strange noise suddenly, like the beat of jungle drums in a Tarzan movie. It gathers force and grows louder, drowning out the sound of the rest of the plant.

Every worker beneath the line is beating on the bottom of the cars with his wrenches. All around, above ground, people laugh and walk in rhythm to the percussion.

Sometimes, on the line, I fantasize about that sound, and the rhythm spreads and spreads. ■

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Memo of the Month

MEMORANDUM

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
SOCIAL AND REHABILITATION SERVICE

TO : SRS EXECUTIVE STAFF

DATE: May 23, 1974

FROM : W. R. Grier, Acting Director
Division of Systems Analysis and Design

W R Grier

SUBJECT: Communication with DSAD Staff

All communications to this staff will be in writing through me.

The members of this staff have been instructed not to have any communication with anybody in SRS except at their discretion. Any commitments by them will be in writing directed to me.

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Flim-Flam, Double-Talk, and Hustle: The Consulting Industry

by Daniel Guttman and Barry Willner

In the past two decades the federal budget has increased from $70 billion to nearly $370 billion. Popular wisdom to the contrary, the number of full-time federal civil servants has remained relatively constant. How does the government manage?

A large part of the answer lies in the growth of an invisible bureaucracy of private corporations whose services are contracted for by the official bureaucracy. In 1946 the largest single portion of the federal administrative budget—30 per cent—was spent on the civil service payroll. By 1966 34 per cent of the administrative budget was spent on contractors and only 22 per cent on full-time government employees. Today it takes almost 80,000 full-time employees to administer the nearly $60 billion annually spent on contractors and the more than $50 billion given in grants to state and local governments and nonprofit organizations such as universities.

The grant and contract budget pays not only for costly weapons systems and high-technology equipment but for an incredible array of hardware and services—food and fuel, paper and paint, construction and repair work, guard services, and trash collection. A smaller but significant amount purchases managerial or planning "expertise." In most cases the government buys such expertise from private corporations that stock experts as if they were assembly-line commodities. Private expertise not only helps plan and manage the over $100 billion spent on grants and contracts, but virtually every other kind of federal spending as well. Moreover, by writing and administering federal rules and regulations, the experts exercise the kind of profound and continuing influence that has no ready monetary measure.

Daniel Guttman and Barry Willner are authors of The Shadow Government *from which this article has been adapted. The book will be published in March by Pantheon. Copyright ©1976 by Center for the Study of Responsive Law.*

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The corporations that market the expertise are largely unknown to the public, but perusal of the Washington, D. C. Yellow Pages suggests that they are the largest industry in the nation's capital. A recent edition lists about 120 "economic and social science researchers," 90 "economists," 150 "education researchers," 400 "management consultants," 60 "operations researchers," 60 "transportation consultants," and 15 "urban affairs consultants." Some are tiny operations, living on one or two contracts and with histories no longer than the government programs that gave them life. Others are divisions of well-known industrial corporations, such as Westinghouse or General Electric; the Washington offices of advisers to the corporate world, such as McKinsey & Co. or Price, Waterhouse; and "think tanks" that have been publicly associated with defense spending, such as the Institute for Defense Analyses and the Stanford Research Institute.

Lawyers have always been present in disproportionate number at the center of American government. But over 50 years ago, Walter Lippmann perceived that another group, "known by all kinds of names . . . as statisticians, accountants, auditors, industrial counselors, engineers of many species, scientific managers, personnel administrators, research men, scientists, and sometimes simply 'private secretaries,' " would be joining the lawyers.

The contracting industry comprises the thousands who work on contract to the government or oscillate between government and contract employment. At the lower levels salaries may be comparable to those paid by the civil service, but in the upper echelons of the more successful organizations salaries may range well over $100,000, far exceeding the $37,500 maximum that most civil servants can attain.

The Yellow Pages merely documents the existence of the consulting industry. Unfortunately it is about the best information available. The bureaucracy of contractor experts is by and large invisible not only to the public but to a good many Washington insiders as well. The official organization charts provide no boxes for contractors. And of course, there is no suggestion of the role outsiders often play in the design of the government organizations represented by the charts.

The Department of Defense is the largest single source of contract dollars. A presidential panel, itself staffed by contractors, reported in 1970 on the Department's penchant for hiring contractors to make studies. "Accurate information on the nature and extent of contract studies within the Department," noted the panel, is "difficult and often impossible to obtain. Large numbers of contract studies are performed for various elements of the Department of Defense by both profit-making and not-for-profit research organizations. . . . It is not possible to go to one place in the Department, or even a few places in each of the services, and get a tabulation of recent or ongoing studies, including subject, purpose, significant findings, cost, or an assessment of the quality of work. There is," the panel concluded, "no effective control of contract studies within the Department."

Westinghouse Joins the Game

In March 1971 the director of a major program for the Department of Housing and Urban Development received a confidential packet of information from Westinghouse. Inside was a document entitled "Business Strategy for 1970."

Westinghouse, the document explained, was combing the government in search of business for its new "Public Management Services" division. The division would engage in "selling services . . . literally the time of people" to public agencies. Intensive review had led to the conclusion that three "functional markets" were ripe sources of income: criminal jus-

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tice administration, transportation, and public administration. Westinghouse acknowledged its lack of experience, but felt this to be a minor problem. The division would "use federal contracts as a basis for developing understanding of state and local needs and to gain credentials and visibility."

Westinghouse's brochure featured a list of its potential competitors in the public management field. With some additions and exceptions, the list is as good a guide as any to the profit-making corporations in the government contract business.

THE WESTINGHOUSE LIST

Accounting Firms
Ernst & Ernst
Price, Waterhouse
Peat, Marwick, Mitchell & Co.

Management Consulting Firms
Booz, Allen, and Hamilton
Abt Associates
Organization for Social and Technological Innovation

Software Firms
Computer Sciences Corporation
Computer Applications, Inc.
Planning Research Corporation
Systems Development Corporation

Computer Firms
IBM
UNIVAC

Industrial Firms
TRW
Sperry Rand
Lockheed

Why was Westinghouse, one of the world's largest corporations, hoping to make money as a public manager?

Westinghouse, the marketing document explained, was entering the "public management" business in hopes that such experience would increase the profitability of the lagging Westinghouse divisions.

Westinghouse's efforts met with quick success. The public management division received a multimillion-dollar contract to redefine the jobs of over 700,000 postal employees, the largest "job evaluation" contract ever awarded by the government. A subsequent congressional investigation discovered that Westinghouse's marketing technique was far more advanced than its public management expertise. The inquiry found that Westinghouse's management experts were idle employees pulled together from throughout the corporation—refrigerator designers and engineers, for example. None had ever performed "job evaluations" before.

The Big Eight

The accounting profession is dominated by the "Big Eight" firms, the largest profit-making organizations of professionals in the world. Arthur Andersen, the first Big Eight firm to issue an annual report for limited distribution, reported over $315 million in earnings for the year ending March 31, 1974. Its 807 active partners averaged $91,400 in earnings, and the top 20 averaged well over $200,000 each. Peat, Marwick, Mitchell (PMM), another Big Eight firm, claims over 10,000 employees in nearly 300 offices throughout the world. "No other profession," financial journalist John Lyons has written, "is as deeply into the guts of the American system, and no other profession is concentrated into so few units."

Although their primary source of income is audit work, the Big Eight have developed "management services" divisions that do everything from locating prospective merger partners to setting up computer systems to studying possible investments. These divisions are among the largest management consulting organizations in the world. Up to 20 per cent of the income of the accounting firm, reports *Business Week*, comes from this growing part of the practice.

Little known is the amount of work that private accounting firms do as management advisers to the government. "No private corporation," asserts Peat, Marwick, Mitchell, "has

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experienced the degree of change in terms of growth, complexity of operations, or goals, objectives, and priorities that the federal government has during the past two decades, and in all likelihood will continue to experience in the future." In PMM's opinion, its expertise is essential to the government in this period.

The basic rule in pursuing government business is a simple one. "We look," explains a top executive in the Lybrand & Cooper consulting practice, "to where the social action legislation is—that's essentially our priority-setting mechanism."

With dozens of offices throughout America, the large accounting firms are ideally structured to market to a growing federal government. This is as true when the program involves industry as it is when federal monies are given out to states and localities. The big firm may be contracted to help Washington organize a new program, then get paid over again as it helps localities spend federal money.

Ernst & Ernst's success in monopolizing criminal justice planning in Indiana illustrates the point. When the Law Enforcement Assistance Administration was created, millions of dollars were made available to state and local law enforcement agencies. In order to qualify for monies, the local agencies had to submit plans—which the federal government would pay for. Ernst & Ernst won contracts to prepare Indiana's application for a planning grant, to prepare the 1969 plan, to prepare the 1970 annual report, to prepare the 1970 plan, to prepare the 1971 planning grant application, to prepare the 1971 comprehensive plan, and to prepare the 1972 comprehensive plan. When the Ernst & Ernst plans were implemented, Ernst & Ernst was in for more business.

Finally, when the Indiana planning agency was called to testify before the Congress, Ernst & Ernst served as its consultant. "It sounds to me," marveled Rep. Dante Fascell, "as if an outsider prepares the whole plan for state operations starting at the local level, subgrantee, region, and the state, and he gets paid for that. Then the same consultant gets paid to see that it is implemented, and at this point one begins to wonder what the state agency is doing."

The Nonprofits

Nonprofit research and consulting corporations are not on the Westinghouse list, but they do much of the same work, and they are often found competing with profit-making corporations.

What is a nonprofit? The clearest current definition is a traditional legal

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one. Nonprofits are not empowered to sell stock or to make profits and cannot, therefore, distribute profits to shareholders. To this basic difference have been added other legal distinctions. Tax law and government contract law, for example, treat profit and nonprofit organizations differently.

But the legal distinction is often far sharper than the practical one. Nonprofits are no less private than profit-making corporations. While boards of directors govern profit-making corporations, self-perpetuating boards of trustees govern nonprofits. If profit-making firms seek profits, nonprofits are no less interested in survival and growth. They are not allowed to finance growth with "profits," but they do so with "fees"—generally computed as a percentage of the cost of a given contract.

So powerful is the association of the term "profit" with private interest, that simply by disavowing the term, nonprofits can project an image of "objectivity" and "public interestedness." Thus, a major Air Force contractor advertises periodically that "Mitre is a leading nonprofit systems engineering company working wholly in the public interest." Not surprisingly, those nonprofits that survive as government contractors serve the "public interest" to the extent that they simultaneously promote corporate (profit-making) growth.

Nonprofits created by government agencies have been dubbed "Federal Contract Research Centers," or "FCRCs." Often spoken of as an "invisible branch" of government, the FCRCs are the only group of consulting contractors to appear with regularity in the public record. Sponsoring agencies account for FCRC expenditures as they treat civil service expenditures, providing Congress with annual totals.

The FCRCs have been just visible enough to absorb perennial congressional criticism of contracted expertise. As a 1971 Defense Department report acknowledged, "the tone and themes of Congressional comments ten years ago—too much growth, too great a cost to government, too little control, and poor quality products—have been repeated in almost every succeeding year. Clearly, as viewed by the Congress, attempts by the DOD and the FCRCs to respond to Congressional concern have not been completely successful."

When the Congress began to impose on the defense FCRCs financial ceilings similar to those imposed on civil service personnel, the organizations sought business from civilian agencies. "When the balloon goes down on one end," quipped a RAND vice president, "it goes up on another."

The Mirage of Contracting Law

There is no coherent body of law or custom that applies to government contracts, nor is there a central source of information on the contracts awarded to hundreds of different organizations by myriad government agencies.

Like most legal or bureaucratic processes, contracting operates on two levels. There exists an elaborate set of written rules and documents that defines how contracts are to be awarded, written, administered, and evaluated. Central to this formal structure is the individual contract itself. The contract is, in theory, a written agreement that will specify the work to be performed by the contractor, the terms of payment, and the period of performance.

But written contract law represents only a small part of the contract process. The contract itself, as Columbia's Bruce Smith has noted, "is not of decisive importance. The formal contract is merely a step in the process of interaction between agency and contractor."

The contract process is dominated by the network of relationships that exists between contractor and agency, and these relationships are crucial to many decisions in the awarding and

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administration of contracts. Of equal importance is the division of labor that most agencies have established. "Contract officers" are legally responsible for the administration and enforcement of contracts and may be in charge of dozens of contracts at any one time. They are not likely to have any technical background in the subject matter of the awards they oversee. The responsibility for managing a contract, on the other hand, generally lies with a "project officer," who in turn has little understanding of contract law and who tends to be more concerned with pushing his program along than with following troublesome contracting rules.

Contractors may sue when they feel that the contracting system has operated unjustly, but as for the public interest, there are virtually no instances of taxpayer suits over money that has been spent illegally or wastefully by dint of poor or even illegal government-contractor performance.

Until World War II, there was a strong preference for competitive bidding to ward off corruption and promote quality and efficiency. Wartime requirements for urgent and flexible procurement, plus the unprecedented purchasing of new technical products, led to an erosion of the practice.

While the procurement laws of the late forties officially favored maximum competition, they permitted exceptions in times of national emergency and peacetime urgency—that is, when the experience necessary to perform the work is available in limited degree, where contract costs are difficult to determine in advance, or even where the contracting agency can decide that "the contract is for services for which it is impracticable to obtain competition." Given these exceptions, the "negotiated" contract made enormous inroads.

Formal competition requires that agencies place notices of their needs in an official publication called the *Commerce Business Daily*. Respondents may then request further information and bid on the contract. By choosing the negotiated-contract route, an agency is not required to advertise formally its needs and may invite a preselected list of contractors to bid on the job, or may simply award a contract to a "sole source."

The figures are devastating. In a recent survey, the GAO told Congress that about 85 per cent of defense contract dollars are not advertised. Of the $7.46 billion in civilian contracts in the fiscal year ending in mid-1968, the GAO found about $1.54 billion related to advertised procurements, while about $5.3 billion were negotiated.

BullFinch

When Robert Finch took office as Nixon's first HEW Secretary, he commissioned a study of the $278.5 million in contracts the Department awarded in fiscal 1968. The study disclosed that 88 per cent of awards were negotiated and that, of this total, 82 per cent were sole-sources. Incidentally, negotiations were favored by HEW in its dealings with both profit-making and nonprofit corporations.

In the Office of Education, where 80 per cent of contract files had not been completed, the review found that 90 per cent of the sole-source files contained absolutely none of the required justifications for the awards. "OE," the survey found, "was in noncompliance with Federal or HEW procurement regulations and good business practice." In the Social and Rehabilitative Services Agency, 98 per cent of the contract files lacked memoranda summarizing the procurement history. In the Environmental Health Services Administration, justifications for negotiation were on file, but "tended to be stereotyped and unsupported other than by a statement from the program officer that the sole source was necessary to get the job done."

The study concluded that the procurement officials were not solely

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responsible for the failures of competition and documentation. The study found that "procurement personnel are seldom involved in initial decisions that affect the procurement process. Program personnel establish requirements, select the contractor, conduct negotiations, and determine contract price, prior to submitting a request for contract to the procurement activity." The contracting officer is thus placed in an untenable position when he questions after-the-fact program actions, and in most cases he is powerless to remedy improper commitments made by program personnel.

The results of the August 1969 HEW study displeased Secretary Finch, who stated that the procedure of advertised competition should be followed unless it was "absolutely necessary" not to.

But one has only to examine the contracts awarded by Secretary Finch's office in the year following the completion of the study to discover the discrepancy between rhetoric and action. The Office of the Secretary produced a grab bag of sole-source awards that amply demonstrated the ease with which top agency officials trample on the procurement process.

The 1971 contract log for the Office of the Secretary records that a corporation called the Inner City Fund received no fewer than five sole-source awards from the Secretary's office alone. Inner City Fund was a newly created firm founded by a handful of young men who arrived in the inner city via elite business schools and the Defense Department's systems analysis shop. Founding member Pug Winokur explained that the Fund was patterned after the well-connected and influential Washington law firm. They were not interested in performing mundane studies but wanted to work directly on major policy issues. Within a short period of its founding, the firm was serving in this role at the Office of Economic Opportunity, the Environmental Protection Agency, the National Security Council, and HEW.

ICF's first award of the fiscal year was OS-71-21. The Assistant Secretary for Population Affairs hired it to develop "meaningful objectives for family planning." HEW requires that sole-source awards be supported by written justifications, and the justification for OS-71-21 was the typical kind supplied. HEW had a "pressing need" to meet the President's promise of adequate family planning services "within the next five years," and the requisite experts had to be "thoroughly familiar" with HEW's management.

Next came OS-71-87, a contract to study criteria for federal support of higher education. By this time, the young ICF principals had worked themselves up to $254 a day, and the Department offered a similarly princely statement of the firm's unique qualifications which, in addition to the usual time constraints, justified the award.

ICF, said the justification, "has exclusive capabilities to meet the requirements of this study. It is unique in its skills in the management of investigative teams simultaneously seeking program budget data and behavioral data concerning institutions of higher education necessary for interpreting program budget data in the field." This seems to mean simply that ICF was familiar with the current jargon of analysis, but the justification boldly declared that even RAND, the font of "program budget" wisdom, lacked "the skills to proceed without time-consuming model construction," men skilled in managing investigative teams, and "personnel versed in the behavioral dimensions of institutional behavior." HEW was "aware of no other alternative source of the required combination of skills."

At least one HEW contract was justified because of the friendship between the contractor and Secretary Finch. Gerson Green was an OEO employee who advised Republican welfare officials in the first months of the Nixon Administration. Green left

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the government to work for a social welfare contractor, University Research Corporation. HEW awarded University Research a sole-source contract to study the HEW R & D program. The sole-source justifcation fixed on Green's unique credentials. Green had served with OEO's R & D program, and "as you know, Mr. Green was a personal adviser to the Secretary for about three months during the transition period and accompanied the Secretary on his trip to Israel." The justification also contained the usual assertion of time pressure. The final report was nearly a year late.

The RFP Route

The RFP, or Request for Proposal, is the keystone of competitive contracting. When the government opens an award to competition, it will normally place a notice of the issuance of the RFP in the *Commerce Business Daily*. RFPs provide a general statement of the work that the agency is interested in and vary widely in content and form. They may have work statements as brief as a page and they may not even give contractors an idea of the experience required or of the "man hours" or dollar value the agency anticipates.

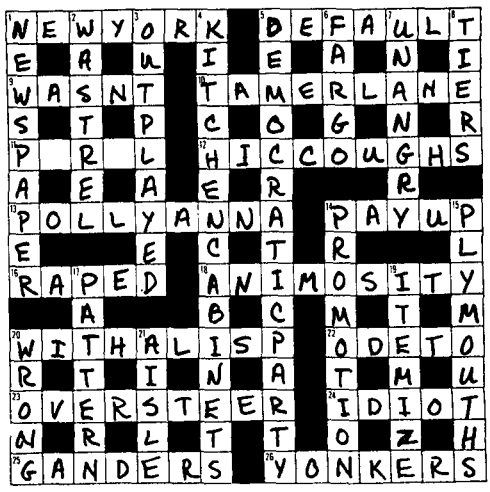
Available studies indicate that the RFP process is "informal and highly selective." Analyzing the defense and NASA procurement process, Edward Roberts, of the MIT Sloan School of Management, concluded:

"The real award process is one involving long-term, person-to-person contacts between technical people in government and industry. They build up common experiences, attitudes, aspirations, confidences. And ideas are generated in this interchange. These are the ideas that later become government-sponsored R & D projects. When he is convinced that an idea has solid merit, the government scientist/engineer initiates a Procurement request. He often feels, naturally, that the work should be carried out by the people in whose capabilities he has faith. Acting in what he believes to be the nation's best interest, he tries to secure 'his' contractor. (He usually succeeds.) If he is confident of his judgment, he thwarts attempts to saddle his project with another contractor. Only when he regards several companies as being highly qualified does real competition prevail."

At the same time that the procurement regulations try to dampen the importance of contacts, more realistic government publications explicitly recognize it. For 25 cents, any citizen can pick up a copy of *Small Business and Government: Research and Development*, a little brochure issued by the Department of Commerce. The pamphlet, written on contract by two employees of the Midwest Research Institute, offers helpful tips to businesses interested in entering the "promising field" of the "billions of dollars of research and development contracts":

"Continuous personal contact with the staff of the contracting agency is a means of keeping informed about proposed government R & D contracts. The importance of such contacts is illustrated by a comment sometimes voiced: 'You are already out of the running if you first learn of a possible research contract through a proposal request.' " ■

Answers to December puzzle:



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Last Hurrahs for the New Deal

by Alan Ehrenhalt

It is hard to exaggerate what the term "New Deal" has meant to the Democratic Party over the past 40 years. It represents the only political program most of today's Democrats have known or used in their adult lives. It stands for a national coalition that won the presidency seven times and has kept Congress in Democratic hands for all but four of the years since 1932. And when it has failed as a program, it has shown remarkable resilience as a slogan, still winning votes in 1974 for people who were not even born when Roosevelt died.

It is striking, therefore, to hear liberal Democrats talking about the New Deal not only as an anachronism but as a dangerous piece of ideological baggage the party will have to discard if it wants to win elections from now on. They talked that way in Louisville a few weeks ago, at the first National Democratic Issues Convention, organized by a group called the Democratic Forum.

The idea behind the Louisville meeting was that the party ought to take some time to talk about its identity and its public policies, and that the formal Democratic convention in New York next July would be a poor place to do it. The Democratic Forum is not part of the regular party structure; it is a group of people, many of them Muskie or McGovern campaign workers in 1972, who have been saying for several years that the party could use a little more debate about what it stands for.

There were no decisions made at Louisville. No votes were taken, and in fact only a small percentage of the party's famous names were there. It was strictly a weekend of talk. But what was said was interesting, and by traditional liberal standards much of it was heretical. A string of speakers told

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the delegates that the New Deal concept of massive federal intervention to solve social problems may be obsolete.

Governor Michael Dukakis of Massachusetts said he thought "much of what government has tried to do over the past 15 years has failed." Rep. Barbara Jordan of Texas acknowledged that "the cornerstone of all our Democratic thinking—our fundamental belief that the federal government could do all things, for all people, at all times, has cracks in it." Pollster Peter Hart said "the Democratic Party cannot expect the voters to put Democrats back in office on the strength of a few newly warmed-over 1933 programs." And futurist Alvin Toffler, the keynote speaker, told them even more bluntly to "throw out all the old New Deal claptrap."

The audience, which included roughly equal proportions of youthful activists and middle-aged union members, did not seem particularly disturbed by such a barrage of revisionist thinking. The one who emerged as chief defender of New Deal honor was writer Ben Wattenberg, former LBJ White House aide, confidant of Senator Henry Jackson, and devout centrist. Wattenberg said that to repudiate the New Deal, even 40 years after the fact, was to cast aside the only politics and program the party knew how to win elections with.

No one on either side of the argument tried to define the words "New Deal," even though that was crucial to the debate. Wattenberg, speaking reverently of the New Deal tradition, seemed to mean the entire Roosevelt-Kennedy-Johnson commitment to better living and social justice. Hardly anybody in the party opposes that, because it's almost too vague to oppose.

What did become clear, however, is

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that some Democrats are beginning to define the New Deal in much narrower terms. They see it, especially in its Great Society package, as a clumsy bureaucratic approach to social problems in which little attempt is made to assess what's working, and most of the money spent ends up with the bureaucrats rather than the needy.

Ted Van Dyk, former Humphrey and McGovern speechwriter and Louisville panelist, summed up four decades of liberal Democratic thought in one critical paragraph: "Once a social and/or economic problem is perceived, a new federal program or agency should be established to solve it. If the problem becomes intractable, the program or the agency should be given additional funding and personnel. . . . If the problem still exists, it should be studied through grants to former colleagues in the agency. If, at last, the problem begins to be solved, nonetheless leave the agency or program, its budget, and its personnel in place."

The fact that somebody is expressing these ideas is not in itself shocking. They are, of course, familiar to readers of this magazine. Since his election, Governor Jerry Brown of California has been making news with them. And last month *Newsweek* devoted an entire story to a critique of big government. What is surprising is the speed with which the critique is now spreading within the Democratic Party. Four years ago there was little hint of a split between New Deal liberals and any new breed or new generation of liberals. Most of the party's presidential candidates seemed to feel not that the New Deal and Great Society had failed, or become irrelevant, but that they were unfortunately never quite completed—even though, as Van Dyk points out in his Louisville background paper, the number of federal social programs rose from 45 to 435 between 1961 and 1968.

Until Brown's election in California, in fact, there was little evidence of a public debate over the idea of post-New Deal liberalism. Now there is one, and virtually every week brings a new article about Brown's relentless questioning of all the things liberals assume government should provide. But it has also been easy to dismiss Brown as an aberration, to emphasize his personality rather than his questions, to categorize him as a lone eccentric governor soft on Buddhism and unlikely to lead a national political party in new directions.

Like Brown, Dukakis has attracted attention during his first year in office for his skeptical attitude toward government expansion. But Dukakis, too, can be explained in individual terms. In his first year, he faced the prospect of an $800-million deficit and was little able to afford new social programs. Give the governor a little money, it is said, and you will find him as orthodox a liberal as anyone else. Michael Dukakis is Hubert Humphrey with a payroll to meet.

A weekend in Louisville, however, made it clear that Brown and Dukakis are not aberrations, however unique their personal or state situations may be. They are on to an idea with some political potential, and one that the Democratic Party need not abdicate to the Republican right.

Contagious Skepticism

Politicians are suddenly saying things you don't expect them to say. John Gilligan, a conventional liberal Democrat during his four years as governor of Ohio, surprised the Louisville audience by saying he couldn't support national health insurance. "In the decade since Medicare and Medicaid have appeared," he said, "we have poured billions into the health care delivery system of this country, without, as far as I can see, improving materially either the level of health care or its availability for most American families."

"The best progress on health is to do nothing," he added later, "unless we change the fee-for-service payment method. . . until you have some con-

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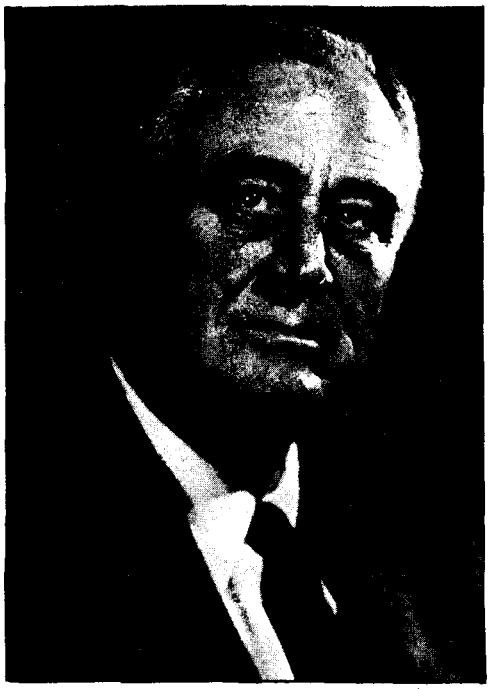

Will He Run for a Twelfth Term?

fidence that bureaucracy can be made accountable, nationalizing things won't make any difference."

There are signs of restlessness in Congress, as well. Senator Gary Hart probably should have attracted more attention in his 1974 campaign when he said of himself and other Democratic newcomers, "We are not a bunch of little Hubert Humphreys." Exactly what Hart meant is open to debate; during his first year in the Senate he has voted with Humphrey and other traditional liberal Democrats far more often than he has opposed them. But presumably he was serving notice that he would not be an automatic vote in favor of every new social program, regardless of its cost. Action in both the Senate and the House this year indicates others in his political generation are thinking the same way.

On November 6, for example, the House passed for the third time in four years a bill to create a new federal consumer agency. In 1971 and 1974, the margin was better than 2 to 1. This year, with the House far more Democratic and far more liberal, it was a matter of nine votes, 208 to 199. Sponsors of the legislation lost 80 votes on the Democratic side, more than 20 of them from normally liberal northern Democrats concerned about bureaucratic expansion. By contrast, the House passed by voice vote an amendment by freshman Democratic Rep. Max Baucus of Montana that would make the agency self-destruct after seven years if it is not specifically renewed.

The author of the bill, Democratic Rep. Benjamin Rosenthal of New York, admitted that something was in the air, even on his side of the aisle. "The timing was bad for us," he said. "There has grown up, especially in the last six months, a strong anti-government, anti-bureaucracy, anti-new agency phenomenon in this country. This bill is a victim of this tide."

There is a tide in state legislatures as well. In Illinois last month, eight of the most liberal-minded Democrats in the state Senate named themselves the "crazy eight" and voted to sustain Governor Daniel Walker's veto of an $81-million school aid bill. The crazy eight are not crazy, and they did not do it out of love for Walker. What these legislators said was that there was no reason to believe the money would go to the schools that needed it most, and that their taxpaying constituents might not like that. So they voted with Walker—and the veto was sustained.

In Illinois and in other states, Democratic legislators are beginning to ask whether proposed new chunks of government are worth the money. Not just whether they will help somebody—everything government does helps *somebody*—but whether they will help enough people to justify the cost.

And beyond that, a deeper question. Can we find a way to pursue equality and social justice without the cost and waste of bureaucratic expansion? There were few answers to that

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in Louisville, for all the criticism of old-fashioned liberalism.

Economist Charles Schultze offered one when he said that most modern social problems are too complex to be solved with the New Deal approach of agencies and regulations. He suggested handling problems like pollution and occupational safety on a reward and punishment basis, using the tax structure or other financial incentives to reinforce behavior which the government deems to be in society's interest. Handling these things by creating new government agencies, as we have done, creates a morass of legal fights and red tape, Schultze said.

There's nothing startling about that idea, but it's the kind of suggestion the Democrats will have to consider if they start telling voters the New Deal no longer makes sense. There were very few other proposals as constructive or as interesting at Louisville.

Waiting for Some Answers

That was a serious shortcoming, and Wattenberg seized on it in a debate that included Dukakis and Van Dyk. "Who repealed the New Deal?" Wattenberg asked. "Throwing dollars after problems is better by far than the alternative, which is to do nothing."

No one answered Wattenberg directly. If Jerry Brown had been there, it's unlikely he would have provided many answers either. Few have emerged from his first year in power in Sacramento. He argues convincingly that four more years of refining the questions are preferable to four years of promising to change people's lives and failing because the answers were wrong.

Still, Wattenberg has a point. The Democrats shouldn't seek votes on the premise that they have replaced coherent New Deal programs—even failed ones—with a new policy of endless inquiry. The voters will want answers and ought to demand at least a few from the 1976 presidential campaign.

Just how many of them will surface during the campaign was not apparent from Louisville. Seven of the contenders for the Democratic nomination spoke at the convention, but none put particular stress on the post-New Deal approach. Morris Udall of Arizona said he agreed with a lot of what Brown has been saying in California, but that he was more optimistic than Brown about what government could accomplish. Udall's platform includes national health insurance and a federally guaranteed job for everybody who wants one, an unlikely beginning to a limited-government campaign.

Some of the candidates are hard to categorize on this issue. You can't call Fred Harris of Oklahoma a New Dealer; his criticism of corporations and of the regressive tax structure leads more toward direct redistribution of wealth than toward new social programs. Harris' populist rhetoric is, if anything, pre-New Deal, a throwback to the nineteenth century.

Jimmy Carter of Georgia frequently sounds skeptical of government, in a generalized way. He talks of how he brought his state "zero-based budgeting," a system in which every program in the state budget is scrutinized each year as if it were a new idea competing for its first dollars. Carter says he saved the state $50 million a year this way while he was governor. It is a promising idea for a post-New Deal liberal campaign, but it is only a start, awaiting further specifics.

A healthy skepticism about New Deal approaches does not require repudiation of everything Democratic administrations have accomplished since 1933. The inequalities of those days still exist. There is nothing obsolete about compassion.

But a political party does not sell out its ends by debating means. George Wallace should not be the only Democrat in next year's presidential primaries talking about big government. ■

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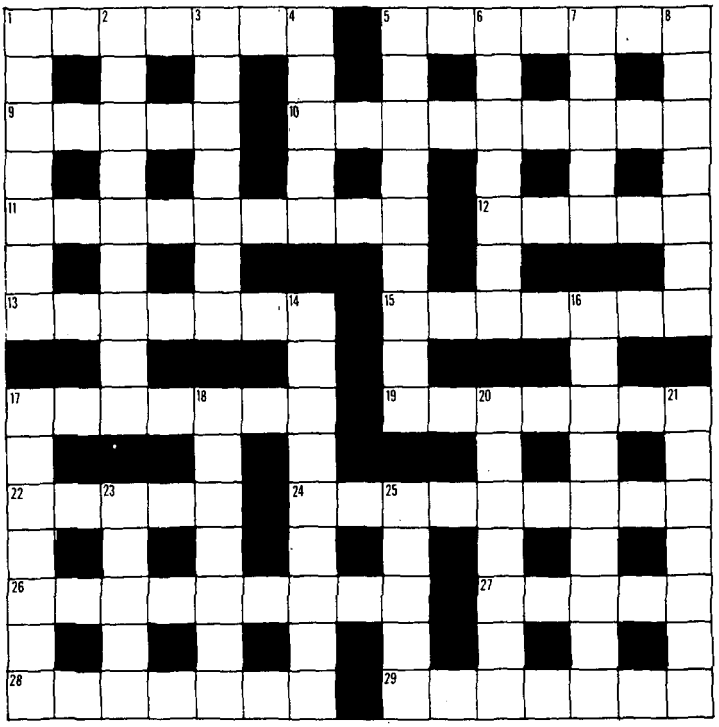
the political puzzle

by John Barclay



Across

1. First thing first in an election year. (7)
5. One upset about coal source can still lead party. (7)
9. Backward deal with a hundred in it is all tied up. (5)
10. A M spacing arrangement is typical of battles. (9)
11. Led the Mongols down a calmer road? (9)
12. Lord is back with nothing inside to slobber about. (5)
13. Topped it all to con Drew. (7)
15. Wilder play will turn woo around. (3,4)
17. Modular housing is swell inside unfinished press. (7)
19. Can he sling around the language! (7)
22. What frontrunner does after he overturned deals. (5)
24. Raises evergreens to put on show? (7,2)
26. It's not good to crimp feet wildly. (9)
27. T V show from brick carrier in registered architect initially. (5)
28. Smoothes way to see a egress. (7)
29. Stops where little side streets interchange. (7)

Down

1. Campaign for favor at start of this puzzle. (7)
2. To put latest fashion in earnings, put out. (9)
3. Another metal in the fireplace? (7)
4. These flats sure don't sound attractive. (5)
5. 1 Across and place to finish there. (6,3)
6. To go around renamed. (7)
7. This goner is mixed-up black today. (5)
8. One slip spoiled letter. (7)
14. Where sis treads bewildered, bad things happen. (9)
16. Failings and sad end of too many Federal commissions. (9)
17. GOP 50-50 in early straw vote. (7)
18. It's a stress coming back, he says. (7)
20. One got scar falling from these vehicles. (2,5)
21. They used to be with it in wild patches. (7)
23. There's enough at end, for example. (5)
25. Movies are, in trade. (5)

The numbers indicate the number of letters and words, e.g., (2,3) means a two-letter word followed by a three-letter word. Groups of letters, e.g., USA, are treated as one word. Answers to last month's puzzle are on page 53.

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political book notes

Public affairs books to be published in January

The Accountability of Power: Toward a Responsible Presidency. Senator Walter F. Mondale. McKay, $12.50.

Beyond Culture: Into the Cultural Unconscious. Edward T. Hall. Anchor, $7.95.

The Concorde Conspiracy. John Costello, Terry Hughes. Scribners, $8.95.

The Cultural Contradictions of Capitalism. Daniel Bell. Basic, $12.95.

Foreign Affairs Bibliography 1962-1972. R. R. Bowker, $42.50.

The 50% Solution: How to Bargain Successfully with Hijackers, Strikers, Bosses, Oil Magnates, Arabs, Russians, and Other Worthy Co-opponents. I. William Zartman, ed. Doubleday.

Food Additives and Federal Policy: The Mirage of Safety. Beatrice Trum Hunter. Scribners, $8.95.

From the Closet to the Courts: The Lesbian Transition. Ruth Simpson. Viking, $12.50.

The Future of the Workplace: The Coming Revolution in Jobs. Paul Dickson. Weybright & Talley, $15.

Game Plan for Disaster. Clark Mollenhoff. Norton, $9.95. The author is one of the great investigative reporters of the current era, but this book is not great. In fact it's not very good at all, with little original material and a lot of the self-righteousness that seems to be the author's way of atoning for his service in the Nixon Administration.

How to Cut Your Taxes. John Barnes. Morrow.

Indian-White Relations: A Persistent Paradox. Jane F. Smith, Robert M. Kvasnicka, eds. Howard Univ. Press, $15.

A Man Named Tony. Stuart Brown. Norton, $8.95. The author will never receive a prize for graceful prose, but he has a gift for narrative that makes this story of the solution of the Yablonski murders an exciting book. The hero is the prosecutor, Richard Sprague, who has the kind of zeal for justice one usually encounters only in novels, movies, and television. We need one like him in every jurisdiction much more than we need billions of dollars from the Law Enforcement Assistance Administration.

The Messenger's Motives: Ethical Problems of the News Media. John L. Hulteng. Prentice-Hall, $8.95/$4.95.

The New Cuba: Paradoxes and Potentials. Ronald Radosh, ed. Morrow.

Nightmare: The Underside of the Nixon Years. J. Anthony Lukas. Viking, $12.50.

Oil Power. Carl Solberg. Mason/Charter, $12.50.

On Writing Well: An Informal Guide to Writing Nonfiction. William Zinsser. Harper & Row, $6.50.

A Peace Denied: The United States, Vietnam, and the Paris Agreement. Gareth Porter. Indiana Univ. Press, $15.

Persons and Masks of the Law. John T. Norman, Jr. Farrar, Straus & Giroux, $10.

The Peter Plan: A Proposal for Survival. Dr. Laurence J. Peter. Morrow, $6.95.

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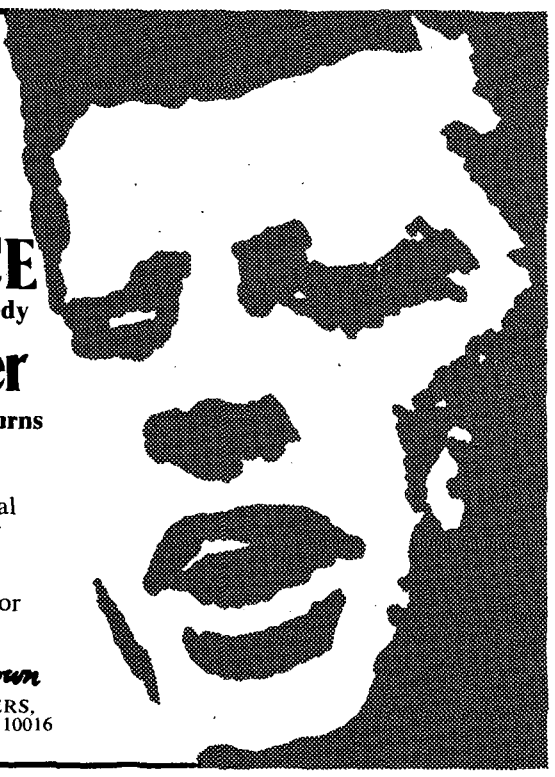

Senator Ted Kennedy: The Career Behind the Image. Theo Lippman, Jr. Norton, $9.95.

Simple Justice. Richard Kluger. Knopf, $15.95. Mr. Kluger, formerly an editor at both Simon & Schuster and Atheneum, spent seven years working on this book about the *Brown v. Board of Education of Topeka* school integration decision. He apparently decided to include every known fact about the case in this dauntingly enormous tome. Do books really have to be this compendious? As a former editor, Kluger must have many times had occasion to ponder the question. The sheer size of this opus no doubt assures it a place on library shelves, where, by the same token, it is in danger of reposing undisturbed.

A Soldier Reports. General William C. Westmoreland. Doubleday, $12.95. The former chief of staff and commander of American forces in Vietnam can come across as downright mindless, as in this description of his activities during the fall after his return from Vietnam:

"It was my pleasure to address the national conventions of all major veterans' organizations in various cities; speak before a joint session of the Nevada legislature in Carson City; participate with more than 30,000 others in honoring Vietnam veterans in Los Angeles where I was privileged to announce that a new USO building was to be named for Bob Hope; address a panel session of the American Bar Association on military law in St. Louis; deliver a Veterans' Day address in the Mormon Tabernacle in Salt Lake City; present the Davis Cup in Charlotte, North Carolina, to the American tennis team and a special trophy to a soldier, Stan Smith, who won the final match for the United States; present the outstanding football player award in the Liberty Bowl in Memphis to Joe Ferguson, subsequently quarterback with the Buffalo Bills; breakfast on St. Patrick's Day with men I have long admired, the New York Police Department; participate in laying the cornerstone of Eisenhower Hall, a new cadet activities building at West Point, and at Mrs. Eisenhower's request, present to the academy the President's class ring, which, for fear of losing it, I wore from Washington to the ceremonies."

But he also makes some compelling points, e.g., that the mining of Haiphong Harbor did not produce the disastrous results those of us against the war had predicted, that the hawks who always favored quick, hard action against North Vietnam were probably righter than those who supported the Johnson-McNamara-Bundy graduated response, which could have

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kept the war going forever. Unfortunately, Westy never realizes that the people who were rightest were the ones who always said we should pull out now.

The Spoiled Child of the Western World. Henry Fairlie. Doubleday, $8.95. An excerpt from this book was published in the November issue of *The Washington Monthly*.

The Time of Illusion. Jonathan Schell. Knopf, $10.

The Tourist: A New Theory of the Leisure Class. Dean MacCannell. Schocken, $8.95.

Toward a Planned Society. Otis L. Graham, Jr. Oxford, $10.

Unequal Justice: Lawyers and Social Change in Modern America. Jerold S. Auerbach. Oxford, $13.95. This is a solidly researched, consistently leftist critique of the reaction of American lawyers to social change. He finds it grossly inadequate, of course. His solution: public regulation of the legal profession and legal services for all, to be financed by federal subsidies and an excess profits tax on corporate law firms. He inadequately perceives the extent to which lawyers themselves are part of the problem—not just their social attitudes but the fact that they are lawyers—and therefore doesn't perceive the danger of solutions that would require more lawyers.

A Very Human President. Jack Valenti. Norton, $9.95. A predictably sympathetic portrait of Lyndon Johnson by one of his former assistants. The book is redeemed by an extremely valuable account of the crucial White House meetings of July 21, 22, and 27, 1965, that led to the major escalation decision of the Vietnam war. George Ball and Mike Mansfield cast the only negative votes and emerge as the heroes of the story. Next to them in expressing doubt was, ironically, Johnson himself, who clearly saw all the dangers of escalation but was unable to free himself from the fear that the United States—and he—would appear to be paper tigers if we pulled out. The villain is McNamara, who emerges as the primary moving force for escalation.

The book is worth buying for the war chapter. The rest of it is not that good. But it does abound in fascinating ironies. For instance, Valenti disputes George Reedy's imperial-court picture of a White House rampant with courtierism but himself provides convincing evidence of Reedy's accuracy. Take the story about Ted Sorensen's office:

"When Ted Sorensen resigned in early 1964, his spacious office became vacant. It was a corner room with one absolutely priceless and attractive asset: it had a john, the only staff office so equipped in the West Wing. Because whomever occupied this office would be vaulted by eminent domain to the top of the presidential aide list, and because LBJ instinctively realized this, he ordered the office remain vacant. But to Bill Moyers, capture of the Sorensen office became essential, and he stalked his prey with all the wily cunning of Henry V at Agincourt.

"Moyers sat in a shared office with Ken O'Donnell, JFK's chief political agent, next door to the Oval Office. This large room was the lair of the appointments secretary, a chore I was assuming more and more, though at that particular time I sat in a smallish office next to the appointments secretary room.

"One day, when Moyers and I were closeted with LBJ, Moyers asked, innocently, casually, almost a throwaway line, if he could sit in the Sorensen office for a few days while he completed work on a presidential speech. It's quiet in there, Moyers said matter-of-factly, as if the Sorensen office was of no real consequence, only a refuge from the tempo and bustle of the West Wing. Nice place to do this important presidential speech. It's only temporary, shrugged Moyers. The president nodded absently.

"The speech was duly completed, and then Moyers, again with a query offered so negligently, solicited the president's permission to sit in the Sorensen office to lay out some crucial domestic legislative programs. More room to spread papers, was Moyers's reasoning. The president frowned, and possibly was about to haul Moyers down, but Bill then suggested he wanted to call several meetings of key cabinet people and other experts. No place to put them, except in the Sorensen office, said Moyers, but, of course, we could hold the meeting in the White House Mess, knowing full well the mess would be too open, too easily a site for leaks. The president nodded hesitantly.

"A day later, Moyers's secretary, Carole Welch, moved in typewriter, bag, and baggage. A day after that, Hayes Redmon, Moyers's assistant, arrived to take up residence. For several weeks, nothing more was heard. No one was called to Moyers's domain so that the conquest was not flaunted to others on the staff who had understood the takeover was merely temporary.

"But day by day, the Moyers colonization continued, until, like the Saxons, the staff woke up one day and found the Normans had moved into the palace."

More fascinating than the anecdote itself is the fact that Valenti's supposed immunity to courtierism did not keep him from remembering for eleven years who got the office with the john.

Working Mothers. Jean Curtis. Doubleday, $7.95.

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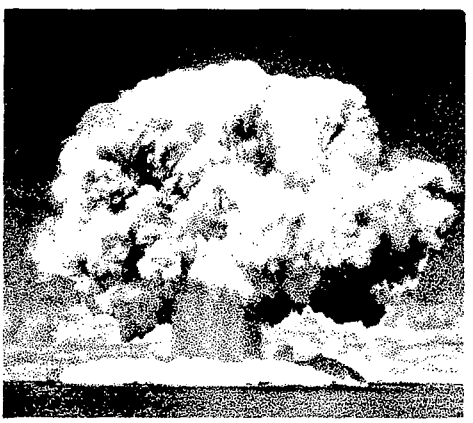

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